

***Brady v. Maryland Report Concerning the  
West Linn Police Department's Investigation  
of Michael Fesser***



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The Clackamas County District Attorney's Office (CCDA) conducted a review of the West Linn Police Department (WLPD) investigation that led to the indictment in *State of Oregon v. Michael Fesser*.<sup>1</sup> The purpose of this review is to determine the obligations of the Clackamas County District Attorney's Office pursuant to *Brady v. Maryland* and ORS 135.815 in light of the information developed. Opinions and decisions expressed in this document are not intended to usurp the decision-making authority of other entities that are investigating or reviewing this conduct.

### **I. Scope of Review: *Brady* Analysis.**

*Brady v. Maryland*, 373 U.S. 83 (1963) held that prosecutors must share information with a defendant that would be material and favorable to the defense. This type of evidence is characterized as "exculpatory" meaning that it is favorable to a defendant in a criminal trial that exonerates or tends to exonerate them of guilt. The Supreme Court, however, found that the Constitution does not require police to preserve and disclose all information "that might be of conceivable evidentiary significance." *Kyles v. Whitley*, 514 U.S. 419, 437 (1995) *Arizona v. Youngblood*, 488 U.S. 51 (1988). It must be "material." The Supreme Court defined "material" evidence as evidence that has a "reasonable probability" that, if the evidence was disclosed to the defense, the result of the proceeding would be different. *Maxwell v. Roe*, 628 F3d 486, 509 (9<sup>th</sup> Cir 2010) (quoting *Strickler v. Greene*, 527 U.S. 263, 280 (1999)); *State v. Bittner*, 235 Or App 554, 561 (2010). A "reasonable probability" is a probability sufficient to undermine the confidence in the outcome. *United States v. Bagley*, 473 U.S. 667, 682 (1985).

In *Giglio v. United States*, 405 U.S. 10 (1972), the Supreme Court later determined that exculpatory evidence includes information that could be used to impeach the credibility of a prosecution witness, including police officers. There are a number of ways to impeach a witness. These include evidence bearing on a witness' untruthfulness, prior inconsistent statements, bad acts, and evidence of bias.

To find a *Brady* violation we must conclude that an officer acted in bad faith in failing to preserve evidence *or* that the evidence suppressed was favorable and material. *State v. Hendershott*, 131 Or App 531, 534 (1994), citing *Arizona v. Youngblood*, 488 U.S. 51 (1988). See also *State ex. Rel. Juv. Dept. of Wasco Cty. v. Huskey*, 130 Or App 419, 423 (1994). In the first scenario where the police fail to preserve evidence, meaning the evidence was not collected or destroyed, we must specifically find the officer acted in bad faith. *Youngblood*, 488 U.S. at 58. The duty to preserve such evidence, however, exists only where the exculpatory value (favorability and materiality) is readily evident. *California v. Trombetta*, 467 U.S. 479, 488 (1984). In the second scenario, where the evidence was preserved but not turned over to the prosecutor we only have to find that it was favorable and material to the case in order to find a constitutional violation. These obligations, however, do not require the prosecutor or police to compile a detailed accounting of all investigatory work, *United States v. Agurs*, 427 U.S. 97

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<sup>1</sup> West Linn Police Department case number 19 2017-270, Portland Police Bureau case number 2017-57475 and *State v. Michael Lawrence Fesser*, Multnomah County Circuit Court case number 17CR74881.

(1976); *Moore v. Illinois*, 408 U.S. 786 (1972), again the evidence must be favorable and material.

The analysis in this case is narrow in scope and focused on three questions:

- 1) Did any of the law enforcement officers involved in this case investigation fail to preserve and provide *Brady* information?
- 2) If so, did the failure to provide this information or other actions by these law enforcement officers demonstrate a lack of honesty or bad faith?
- 3) If the answer to the first two questions is in the affirmative, the CCDA has an obligation to provide this information to the defense in any prosecution where these law enforcement officers are witnesses. The CCDA must then determine whether these officers will be called as witnesses or otherwise relied upon in any criminal prosecutions.

## **II. Summary**

The focus of the *Brady* evaluation is the West Linn Police Department personnel involved in the Michael Fesser criminal investigation, including: 1) Chief Terry Timeus, 2) Det. Tony Reeves (formerly known as Tony Poitras), 3) Lt. Mike Stradley, and 4) Det. Mike Boyd. This report provides a review and analysis of the information that was, or was not, collected in the course of the criminal investigation and eventually provided to prosecutors. The CCDA did not interview witnesses associated with this case, as not to interfere with the pending criminal investigation by the federal government. There is also a protective order concerning some of the information developed during the civil litigation. The information available, however, was sufficient to complete this review.

The narrative in this report describes the case and our findings while citing the relevant sources of information. Included in the appendix is a timeline of events, the WLPD investigative reports, relevant text messages, and a letter that was seized from Mr. Fesser when he was arrested. In the course of this review, it was determined this investigation was replete with inappropriate and offensive investigative tactics, and lacked transparency, honesty and any sense of fair play.

The findings discussed in this report include a determination that Det. Tony Reeves and Chief Terry Timeus committed misconduct together and independent of one another. The CCDA finds that Det. Reeves withheld exculpatory/impeachment evidence, was complicit in an illegal recording, and disclosed possible confidential attorney-client information. The CCDA also finds that Chief Timeus was complicit in disclosing possible confidential attorney-client information to Eric Benson, the alleged victim in this case. These acts provide an appearance of collusion that was motivated by Chief Timeus' personal friendship with the alleged victim.

## **III. Materials Reviewed by the Clackamas County District Attorney's Office**

On February 10, 2020, the Clackamas County District Attorney's Office learned that the City of West Linn settled a civil lawsuit filed by Michael Fesser against the WLPD police department. The suit alleged misconduct that included an unlawful arrest, the unlawful seizure of

evidence, destruction of evidence, an investigation conducted outside of their jurisdiction, withholding evidence, and the appearance of an inappropriate relationship between the department chief and the alleged victim. The suit also asserted that a racist hostility fueled the criminal investigation against Mr. Fesser, an African American man, based on text messages discovered during the civil litigation.<sup>2</sup> The lawsuit specifically alleged misconduct by the following West Linn Police Department officials: 1) Chief Terry Timeus, 2) Det. Tony Reeves (formerly known as Tony Poitras), 3) Lt. Mike Stradley, and 4) Det. Mike Boyd. The Clackamas County District Attorney's Office began an assessment of the evidence, and after consultation with federal law enforcement authorities, determined this office would focus on issues pertaining to our obligations under *Brady v Maryland*, and federal authorities would initiate a criminal investigation.

Upon request from the CCDA, Mr. Fesser's civil attorney Paul Buchanan provided materials from the civil litigation to the CCDA as listed below. Mr. Buchanan redacted portions of some of these materials due to the existence of a protective order in the civil litigation:<sup>3</sup>

- Second Amended Complaint, *Michael Fesser v. The City of West Linn, Terry Timeus, Tony Reeves, Mike Boyd and Mike Stradley*, Civil No. 3:18-cv-01516-SB, dated January 7, 2020;
- Declaration of Paul Buchanan in Support of Reply to Defendant's Opposition to Plaintiff's Motion for Leave to File Second Amended Complaint, *Michael Fesser v. The City of West Linn, Terry Timeus, Tony Reeves, Mike Boyd and Mike Stradley*, Civil No. 3:18-cv-01516-SB, dated May 16, 2019;
- Declaration of Paul Buchanan in Support of Plaintiff's Motion for Leave to File Third Amended Complaint, *Michael Fesser v. The City of West Linn, Terry Timeus, Tony Reeves, Mike Boyd and Mike Stradley*, Civil No. 3:18-cv-01516-SB, June 28, 2019;
- Plaintiff's Opposition to Defendant's Motion for Summary Judgment, *Michael Fesser v. The City of West Linn, Terry Timeus, Tony Reeves, Mike Boyd and Mike Stradley*, Civil No. 3:18-cv-01516-SB, January 31, 2019.
- Transcript of the Videotaped Deposition of Neil Hennelly, *Michael Fesser v. The City of West Linn, Terry Timeus, Tony Reeves, Mike Boyd and Mike Stradley*, Civil No. 3:18-cv-01516-SB, August 26, 2019.
- Transcript of the Videotaped Deposition of Tony Reeves, *Michael Fesser v. The City of West Linn, Terry Timeus, Tony Reeves, Mike Boyd and Mike Stradley*, Civil No. 3:18-cv-01516-SB, March 15, 2019.

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<sup>2</sup> Second Amended Complaint, *Michael Fesser v. The City of West Linn, Terry Timeus, Tony Reeves, Mike Boyd and Mike Stradley*, Civil No. 3:18-cv-01516-SB; Declaration of Paul Buchanan in Support of Reply to Defendant's Opposition to Plaintiff's Motion for Leave to File Second Amended Complaint, *Michael Fesser v. The City of West Linn, Terry Timeus, Tony Reeves, Mike Boyd and Mike Stradley*, Civil No. 3:18-cv-01516-SB; Declaration of Paul Buchanan in Support of Plaintiff's Motion for Leave to File Third Amended Complaint, *Michael Fesser v. The City of West Linn, Terry Timeus, Tony Reeves, Mike Boyd and Mike Stradley*, Civil No. 3:18-cv-01516-SB; Plaintiff's Opposition to Defendant's Motion for Summary Judgment, *Michael Fesser v. The City of West Linn, Terry Timeus, Tony Reeves, Mike Boyd and Mike Stradley*, Civil No. 3:18-cv-01516-SB.

<sup>3</sup> Stipulated Protective Order, *Michael Fesser v. The City of West Linn, Terry Timeus, Tony Reeves, Mike Boyd and Mike Stradley*, Civil No. 3:18-cv-01516-SB, November 6, 2018.

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- Transcript of Videotaped Deposition of James Michael Stradley. *Michael Fesser v. The City of West Linn, Terry Timeus, Tony Reeves, Mike Boyd and Mike Stradley*, Civil No. 3:18-cv-01516-SB, June 12, 2019.
- Transcript of Videotaped Deposition of Terry Timeus, *Michael Fesser v. The City of West Linn, Terry Timeus, Tony Reeves, Mike Boyd and Mike Stradley*, Civil No. 3:18-cv-01516-SB, June 25, 2019.
- Texts from Terry Timeus' phone from civil litigation: *Michael Fesser v. The City of West Linn, Terry Timeus, Tony Reeves, Mike Boyd and Mike Stradley*, Civil No. 3:18-cv-01516-SB.
- Texts from Eric Benson's phone from civil litigation: *Michael Fesser v. The City of West Linn, Terry Timeus, Tony Reeves, Mike Boyd and Mike Stradley*, Civil No. 3:18-cv-01516-SB.
- Transcript of Videotaped Deposition of Eric Benson, *Michael Fesser v. The City of West Linn, Terry Timeus, Tony Reeves, Mike Boyd and Mike Stradley*, Civil No. 3:18-cv-01516-SB, January 23, 2018.
- Video Recording, Deposition of Eric Benson, *Michael Fesser v. The City of West Linn, Terry Timeus, Tony Reeves, Mike Boyd and Mike Stradley*, Civil No. 3:18-cv-01516-SB, January 23, 2018.
- Defendant West Linn Police Department Supplemental Response to Plaintiff's First Set of Interrogatories, *Michael Fesser v. The City of West Linn, Terry Timeus, Tony Reeves, Mike Boyd and Mike Stradley*, Civil No. 3:18-cv-01516-SB, January 22, 2018.
- Defendant West Linn Police Department Response to Plaintiff's First Request for Admission, *Michael Fesser v. The City of West Linn, Terry Timeus, Tony Reeves, Mike Boyd and Mike Stradley*, Civil No. 3:18-cv-01516-BR, October 29, 2018.
- Defendant West Linn Police Department Response to Plaintiff's Second Set of Interrogatories, *Michael Fesser v. The City of West Linn, Terry Timeus, Tony Reeves, Mike Boyd and Mike Stradley*, Civil No. 3:18-cv-01516-SB, February 19, 2019.
- Defendant West Linn Police Department Response to Plaintiff's Third Set of Interrogatories, *Michael Fesser v. The City of West Linn, Terry Timeus, Tony Reeves, Mike Boyd and Mike Stradley*, Civil No. 3:18-cv-01516-SB, September 6, 2019.
- Defendant West Linn Police Department's Response to Plaintiff's First Request for Admission, *Michael Fesser v. West Linn Police Department; Terry Timeus; Tony Reeves; and Mike Boyd*, Civil No. 3:18-cv-1516-BR.
- Transcript of Videotaped Deposition of Fred Marlow IV, *Michael Fesser v. The City of West Linn, Terry Timeus, Tony Reeves, Mike Boyd and Mike Stradley*, Civil No. 3:18-cv-01516-SB, January 23, 2019.
- Transcript of Videotaped Deposition of Nijaz Omerovic, *Michael Fesser v. The City of West Linn, Terry Timeus, Tony Reeves, Mike Boyd and Mike Stradley*, Civil No. 3:18-cv-01516-SB, March 7, 2019.
- Investigation Case File: *Michael Fesser v. Eric Benson, Llc DbA A & B Towing and Recovery* EEEMRCI170523-10657, Bureau of Labor and Industries, State of Oregon.
- A&B Towing business records collected by WLPD

In addition to the materials from the civil litigation, the CCDA received the following information from the West Linn Police Department and the Multnomah County District Attorney's Office:

- The complete physical file in *State v. Michael Lawrence Fesser*, Multnomah County Circuit Court case number 17CR74881.
- Internal Affairs Investigation by the West Linn Police Department regarding Det. Mike Boyd and Det. Tony Reeves and the Fesser case. Such materials included:
  - Notice of Investigatory Interview, Sgt. Tony Reeves.
  - Internal Affairs Reprimand, Sgt. Tony Reeves.
  - Internal Affairs interview of Tony Reeves.
  - Internal Affairs interview of Mike Boyd.
  - Text Messages between Terry Timeus and Eric Benson.
  - Text Messages between Reeves and Eric Benson.
  - Police Reports, Michael Fesser/A&B Towing theft investigation. West Linn Police Department case number 2017-270.

#### **IV. Factual Background**

The investigation into Michael Fesser began with allegations he was stealing money from his employer, A&B Towing, Inc. Eric Benson owned the company at the time, but his father, who founded the company, was the person who hired Mr. Fesser in 2004.<sup>4</sup> In 2016/17, Mr. Fesser was responsible for a bi-monthly auction at A&B Towing where used or damaged vehicles were sold to the public or other businesses dealing in car sales or auto parts. In late 2016 or early 2017, Mr. Benson contacted his friend, West Linn Police Department Chief Terry Timeus, to report what he indicated was his belief that Mr. Fesser was stealing money during the auctions.<sup>5</sup> He alleged that Mr. Fesser developed a scheme where he would sell a vehicle for a certain amount of money, but then write a lower amount as the sales price on the receipt/documentation memorializing the purchase, and pocket the difference. Mr. Benson alleged he believed Mr. Fesser stole a substantial amount of money (potentially \$200,000) during the previous three years.<sup>6</sup>

Subsection "A" outlines the investigation submitted by the West Linn Police Department to the Multnomah County District Attorney's Office. Subsection "B" outlines the information revealed during civil litigation, an internal affairs investigation by WLPD, and the Multnomah County District Attorney's Office's records relating to the prosecution of Mr. Fesser.

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<sup>4</sup> Transcript of Videotaped Deposition of Eric Benson, January 23, 2018, pg. 30.

<sup>5</sup> Transcript of Videotaped Deposition of Eric Benson, January 23, 2018, pg. 48 (Benson states that he first spoke with Chief Timeus about his concerns "somewhere in the neighborhood of November or December 2017 – or '16") and pg. 126 (Benson stated that "when I contacted the police originally, I talked to Terry Timeus, who point me, to well, call it Mr. Poitras or Detective Poitras").

<sup>6</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg.3.

***A. The West Linn Police Department's Criminal Investigation of Michael Fesser.***

The purpose of this section is to provide a detailed description of the case file from the West Linn Police Department regarding the investigation of Michael Fesser. It is important to understand this information in the context of what was – and was not – included in the investigative reports and ultimately provided to a Multnomah County Grand Jury. There is an initial report written/finalized on February 24, 2017, and a supplemental report dated February 28, 2017. The narrative portion of the reports total three pages.<sup>7</sup>

The reports state the investigation began on February 6, 2017, when Det. Reeves met with Mr. Benson to talk about an allegation of an employee theft occurring at A&B Towing in Portland.<sup>8</sup> There is nothing in the report explaining why the West Linn Police Department was investigating a crime alleged to have occurred in the City of Portland. In his report, Det. Reeves documented that Mr. Benson's suspicions of theft arose from his discovery that he was making substantially less money at the weekend auctions than he had in the past.<sup>9</sup> Mr. Benson told Det. Reeves "he called a few other tow companies and asked them if they were seeing a drop in the prices of vehicles at the auction [and he was told] they were not."<sup>10</sup> Mr. Benson also spoke to an employee whose name was not included in the reports.<sup>11</sup> That employee identified a friend named Marcus Olmos, who purchased two vehicles at an auction from Mr. Fesser in 2016. The report states:

"Benson said he then talked to an employee and learned that her friend, Marcus Olmos, purchased two vehicles at the auction on November 26, 2016. Olmos purchased a 2007 Toyota Yaris for \$1540.00. Fesser reported the Yaris sold for \$375.00. Olmos also purchased a 1998 VW Golf for \$150.00. Fesser reported the vehicle sold for \$75.00. This is a \$1240.00 difference."<sup>12</sup>

It is unclear what prompted the employee to share this information with Mr. Benson. In response to receiving this information, Det. Reeves contacted Mr. Olmos to take a statement. He called him by phone on February 6, 2017, and confirmed the purchases and that he had paid a higher price.<sup>13</sup>

On February 11, 2017, Det. Reeves reported that Brian Dunst, a manager for A&B Towing, had a friend attend one of Mr. Fesser's auctions.<sup>14</sup> The police reports did not identify the name of the friend. Nonetheless, that person physically attended the auction and reported the results to Mr. Dunst who was listening over the phone.<sup>15</sup> On February 13, 2017, Det. Reeves met

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<sup>7</sup> West Linn Police Department case 2017-270, the criminal investigation into Michael Fesser.

<sup>8</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 3.

<sup>9</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 3.

<sup>10</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 3.

<sup>11</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 3.

<sup>12</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 3.

<sup>13</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 3.

<sup>14</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 3.

<sup>15</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 3.

with Mr. Benson and Mr. Dunst at their office.<sup>16</sup> They discussed the process associated with the February 11<sup>th</sup> auction and Det. Reeves was shown documentation. The parties explained to Det. Reeves that as part of the sale, each vehicle has its own paperwork that is then wrapped around the money from the sale and dropped into a safe box outside the office.<sup>17</sup> Mr. Benson and Mr. Dunst told the detective that twenty-four (out of forty-six) of the vehicles sold at the February 11<sup>th</sup> auction were purchased for a greater price than reported.<sup>18</sup> The price difference was between \$25 to \$225 per vehicle.<sup>19</sup> The total difference reported by Mr. Fesser was about \$1,000.<sup>20</sup> In the investigative reports, Det. Reeves identified two fraudulent purchases. The first was a 2001 Jeep Cherokee sold to Everything Auto owned by Darryl Anderson.<sup>21</sup> The documentation prepared by Mr. Fesser listed the sale price at \$225, but Mr. Dunst overheard the sale and believed it sold for \$250.<sup>22</sup> Det. Reeves contacted Mr. Anderson who confirmed the car sold for \$250, thus a difference of \$25.<sup>23</sup> The second purchase involved a 1997 Honda Passport sold to Fred Marlow.<sup>24</sup> The recorded sale price was \$100, but Mr. Dunst heard it sell for \$150 and Mr. Marlow confirmed that amount, thus a difference of \$50.<sup>25</sup> At this point, Det. Reeves “stopped contacting witnesses in an attempt to keep [Mr.] Fesser from learning of [his] investigation.”<sup>26</sup>

On February 16, 2017, Mr. Benson contacted Det. Reeves about a customer who provided him with additional evidence of theft against Mr. Fesser.<sup>27</sup> The customer was Nijaz Omerovic.<sup>28</sup> Mr. Benson arranged the meeting with Mr. Omerovic and Det. Reeves at his office.<sup>29</sup> The following excerpt is from Det. Reeves' report:

“Omerovic told me that Fesser has been stealing from the auction for several years. He told me he has seen Fesser filling out two separate auction sheets. One with the real price the vehicle was sold for and one with the reported price. Omerovic told me he keeps records of the vehicle he purchases from the auction and he would provide those records. He told me he never reported this because he was afraid of the consequences from Fesser. He said Fesser recently took \$250.00 from him and would not give it back. He said he was tired of Fesser stealing and felt it was time to report it. He told me that he knew I was investigating Fesser because Darryl asked him if I contacted him.”<sup>30</sup>

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<sup>16</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 3.

<sup>17</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 3.

<sup>18</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 3.

<sup>19</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 3.

<sup>20</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 4.

<sup>21</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 4.

<sup>22</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 4.

<sup>23</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 4.

<sup>24</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 4.

<sup>25</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 4.

<sup>26</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 4.

<sup>27</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 4.

<sup>28</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 4.

<sup>29</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 4.

<sup>30</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 4.



In the report, Det. Reeves states that Mr. Omerovic provided him paperwork documenting the purchase and difference in sale price(s).<sup>31</sup> The paperwork included DMV lien papers, an A&B towing contract, and in one case, a title for a vehicle. On the documentation, Mr. Omerovic hand-wrote the sale price.<sup>32</sup> Det. Reeves then took the A&B Auction Sheets provided by Mr. Benson to compare the sale prices.<sup>33</sup> The four cases identified in the investigative reports include:

- On October 22, 2016, Mr. Omerovic purchased a 2004 Toyota Matrix during an auction for \$1,870.00 but Mr. Fesser documented the purchase price at \$500.<sup>34</sup>
- On October 22, 2016, he purchased another vehicle at the auction, a 2000 Toyota Tacoma for \$1,870.00 but Mr. Fesser reported the sale price at \$550.<sup>35</sup>
- On November 26, 2017, Omerovic purchased a 2013 Honda Civic for \$4,950.00 and Mr. Fesser documented that it sold for \$1,000.<sup>36</sup>
- On January 28, 2017, he purchased a 2013 VW Jetta for \$1,500.00 while Mr. Fesser reported a sale for \$450.<sup>37</sup>

In the report, Det. Reeves states that Mr. Omerovic only gave him the mentioned paperwork.<sup>38</sup>

The police reports state that Mr. Dunst, who was never subject to a thorough law enforcement interview, continued to investigate. He attempted to retrieve all auction records from A&B towing. During his search, however, he realized the 2016 auction file was missing.<sup>39</sup> He relayed his discovery to Mr. Benson who asked Mr. Fesser about the missing files. He claimed they were at home so he could do his collection reports.<sup>40</sup> This was not standard business practice according to Mr. Benson, as the collection records were supposed to be filled out the day of the auction.<sup>41</sup>

The final supplemental report discusses the actions of Det. Reeves on February 25, 2017.<sup>42</sup> However, the date for the auction in the report is February 26<sup>th</sup>, which is incorrect.<sup>43</sup> Nonetheless, the report talks about Det. Reeves and his colleague, Det. Mike Boyd, attending the A&B Towing auction.<sup>44</sup> The report does not mention what actually happened at the auction or communications between Det. Reeves, Mr. Benson and Chief Timeus, which is discussed in Subsection "B."<sup>45</sup> It states the following:

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<sup>31</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 4.

<sup>32</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 4.

<sup>33</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 4.

<sup>34</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 4.

<sup>35</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 4.

<sup>36</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 4.

<sup>37</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 4.

<sup>38</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 4.

<sup>39</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 4.

<sup>40</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 4.

<sup>41</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 4.

<sup>42</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 6.

<sup>43</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 6.

<sup>44</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 6.

<sup>45</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 6.

“On February 26, 2017 Detective Boyd and I attended the A&B Towing auction located at 5838 SE 111<sup>th</sup> Avenue, Portland, Or. Portland Police staged in the area with the intent to arrest Micheal Fesser for Aggravated Theft 1 following the auction.”<sup>46</sup>

The next line in the report documents the arrest and then continues to discuss the search of Mr. Fesser's vehicle, contact with him, review of evidence, a new witness, and a subsequent meeting.<sup>47</sup> The report is one page long. It documents that after Mr. Fesser was arrested, Det. Reeves searched his vehicle.<sup>48</sup> During the search, Det. Reeves seized an auction list and a title to a vehicle sold at the auction, along with \$500 and several other documents labeled with A&B Towing.<sup>49</sup> Mr. Fesser was taken to Portland Police Bureau's East Precinct for an interview.<sup>50</sup> After reading Mr. Fesser his *Miranda* rights, the reports indicate that Det. Reeves asked him a few specific questions where each time Mr. Fesser replied “I don't have anything to say about that.”<sup>51</sup> Det. Reeves then ended the interview.<sup>52</sup>

The reports state that Det. Reeves then examined the evidence collected from the search of Mr. Fesser's car. He identified the paperwork wrapped around the \$500 as a title to a vehicle for Mr. Fesser's car business.<sup>53</sup> He also found additional paperwork belonging to his dealership and communications between Mr. Fesser and a law firm.<sup>54</sup> The detective indicates that he sealed these items in a large envelope and contacted Mr. Fesser to inform him he could retrieve them at the WLPD.<sup>55</sup>

Det. Reeves continued his investigation by contacting several more witnesses.<sup>56</sup> However, the report does not discuss how he identified certain individuals as potential witnesses, how many people he interviewed, or their names and contact information. The report only mentions one person, a potential witness named Robin Palmer who purchased the majority of the vehicles at the A&B Towing auctions on behalf of NW Metals.<sup>57</sup> According to the reports, Mr. Palmer told Det. Reeves that he kept records for all the vehicles he purchases and would provide them to the police.<sup>58</sup> This is the extent of the documentation of the interview in the police report. Det. Reeves then met with Mr. Fesser on February 28, 2017, to return the property seized from his vehicle.<sup>59</sup> The detective states that as Mr. Fesser was walking away he smiled and said “Robin wanted me to tell you hello.”<sup>60</sup> The detective said he asked “Robin Palmer?” and,

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<sup>46</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 6.

<sup>47</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 6.

<sup>48</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 6.

<sup>49</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 6.

<sup>50</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 6.

<sup>51</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 6.

<sup>52</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 6.

<sup>53</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 6.

<sup>54</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 6.

<sup>55</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 6.

<sup>56</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 6.

<sup>57</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 6.

<sup>58</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 6.

<sup>59</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 6.

<sup>60</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 6.

according to Det. Reeves, Mr. Fesser smirked, walked away and said, "Bum."<sup>61</sup> At this point, the detective wrote in his report that it was clear Mr. Fesser was implying that Mr. Palmer would not cooperate.<sup>62</sup> This is the last mention of Mr. Palmer in the police reports.

These reports are purported to document the relevant aspects of the investigation, and were the only information submitted to the Multnomah County District Attorney's Office and later to a Grand Jury. This is important for this *Brady* review, as it demonstrates Det. Reeves and the West Linn Police Department withheld exculpatory and impeachment evidence in the context of an investigation that lacked any pretense of being thorough and objective.

***B. Information Discovered Concerning the West Linn Police Department's Investigation in the Fesser Case During Civil Litigation.***

The following is a comparison of the information developed in Mr. Fesser's civil litigation to the WLPD investigation.

This review revealed that Mr. Benson initiated a crime report in the Fesser matter in November/December 2016 or early January 2017, when he contacted his friend, Terry Timeus, the former Chief of Police for the West Linn Police Department.<sup>63</sup> Mr. Benson testified at a previous deposition they were in fact friends and had known each other for seven to ten years,<sup>64</sup> although Chief Timeus claimed they were just acquaintances who had gone fishing a few times.<sup>65</sup> Nonetheless, there was a relationship and a potential conflict of interest or appearance of impropriety. Chief Timeus ignored any such conflict when he decided to look into the matter, and assigned Det. Reeves (formerly Poitras) to investigate. During the course of the investigation, the law enforcement personnel involved in the matter were all aware of the relationship and conflict of interest. Det. Reeves stated in his deposition that at the time he wrote his police reports he knew about the friendship.<sup>66</sup> In reference to the investigative reports, however, there was never any mention of Mr. Benson's relationship with Chief Timeus. This is a potential conflict of interest and impeachment evidence as well.

The civil depositions revealed details of this initial conversation between Mr. Benson and Chief Timeus. Mr. Benson reported he had an employee, Angela Palmer (dispatcher for A&B Towing), tell him that her friend, Marcus Olmos (purchaser), bought a car for a certain amount of money and when Mr. Benson went to the auction sheet it was reported as a different amount.<sup>67</sup> Prior to this report, Mr. Benson did not have any concerns about Mr. Fesser's honesty or

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<sup>61</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 6.

<sup>62</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 6.

<sup>63</sup> Transcript of Videotaped Deposition of Eric Benson, January 23, 2018, pg. 48 (Benson states that he first spoke with Chief Timeus about his concerns "somewhere in the neighborhood of November or December 2017 – or '16") and pg. 126 (Benson stated that "when I contacted the police originally, I talked to Terry Timeus, who then pointed me to, well call it Mr. Poitras or Detective Poitras").

<sup>64</sup> Transcript of Deposition, Eric Benson, pgs. 46.

<sup>65</sup> Transcript of Deposition, Chief Terry Timeus, pg. 25 – 28 ("fishing acquaintances").

<sup>66</sup> Transcript of Deposition, Det. Tony Reeves, Pgs. 99 – 100.

<sup>67</sup> Transcript of Videotaped Deposition of Eric Benson, January 23, 2018, pgs. 49-50.

trustworthiness.<sup>68</sup> None of this information, however, including Ms. Palmer's name, or what prompted her to report this to Mr. Benson in the first place, was included in the police reports.

In January 2017, Chief Timeus debriefed and assigned Det. Reeves to investigate the theft case involving Mr. Fesser. He also debriefed Lt. Mike Stradley and Capt. Hennelly. The information reviewed from the civil litigation provided the following details about the briefings:

- Chief Terry Timeus had a meeting with Det. Reeves about the possible employee theft from A&B Towing.<sup>69</sup> Det. Reeves said in a later deposition that it was unusual for the chief to walk into his office.<sup>70</sup> The chief said he had a possible employee theft from A&B Towing and asked Det. Reeves to look into it.<sup>71</sup> The specific details of this first meeting are unknown given that none of the parties took any notes or wrote any reports about it.<sup>72</sup> At the initial meeting, Det. Reeves knew the criminal conduct occurred in another jurisdiction.<sup>73</sup> At some point during the meeting, Det. Reeves remembered the chief told him that Eric Benson, the owner of A&B Towing, would contact him to talk about the theft.<sup>74</sup>
- During this initial stage, Lt. Mike Stradley and Capt. Neil Hennelly were also debriefed.<sup>75</sup> Their initial goal was to refer the case to the Portland Police Bureau (PPB) and have Det. Reeves shadow those investigators.<sup>76</sup> Given Lt. Stradley's prior experience and contact with the Portland Police Bureau, he would be the person to contact that agency.<sup>77</sup>

After the initial debrief in mid-to-late January 2017, Lt. Stradley contacted PPB about investigating the case. Lt. Stradley would later state he did not feel he was getting any cooperation.<sup>78</sup> Lt. Stradley told Det. Reeves to talk to PPB Sgt. Randy Tieg.<sup>79</sup> On February 1, 2017, Det. Reeves contacted Sgt. Tieg and PPB Det. Becker about investigating the case.<sup>80</sup> Det. Reeves also shared that Mr. Benson was "willing to front cash to me to buy cars and get P.C."

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<sup>68</sup> Transcript of Videotaped Deposition of Eric Benson, January 23, 2018, pgs. 101-102.

<sup>69</sup> Transcript of Videotaped Deposition of Tony Reeves, pg. 55 (The January 2017 timeframe was deduced from a February 1, 2017, email from Mr. Reeves to a PPB Detective discussing a conversation he had with another PPB Detective Tieg which was prompted by direction from West Linn Lt. Mike Stradley inferring the initial debrief was in early January).

<sup>70</sup> Transcript of Videotaped Deposition of Tony Reeves, pgs. 44 – 45.

<sup>71</sup> Transcript of Videotaped Deposition of Tony Reeves, pg. 45.

<sup>72</sup> Transcript of Videotaped Deposition of Tony Reeves, pgs. 45

<sup>73</sup> Transcript of Videotaped Deposition of Tony Reeves, pgs. 48.

<sup>74</sup> Transcript of Videotaped Deposition of Tony Reeves, pgs. 46 – 47.

<sup>75</sup> Transcript of Videotaped Deposition of Neil Hennelly, pg. 18.

<sup>76</sup> Transcript of Videotaped Deposition of Neil Hennelly, pg. 18-19.

<sup>77</sup> Transcript of Videotaped Deposition of Neil Hennelly, pg. 19; *also see* Transcript of Video Deposition of Tony Reeves, pg. 166; *also see* Transcript of Video Deposition of Mike Stradley, pg. 48 - 49.

<sup>78</sup> Transcript of Videotaped Deposition of Stradley, pgs. 45 -46 (Lt. Stradley made contact with Det. Commander Dave Hendrie and tried to get him to take the case); pgs. 68 – 69; *also see* pg. 67 ("\* \* \*my impression from the conversation was they were completely blowing it off and didn't want anything to do with it, just weren't interested.").

<sup>79</sup> Transcript of Videotaped Deposition of Tony Reeves, pg. 55, 58.

<sup>80</sup> Transcript of Videotaped Deposition of Tony Reeves, pg. 55 (refers to an email from Det. Reeves to PPB Detective Becker which states: "I just talked to Sgt. Tieg about a case I want to work on Fesser")

<sup>81</sup>Sgt. Tieg ultimately told Det. Reeves that PPB was unwilling to take on the investigation.<sup>82</sup> Around this time, the West Linn Police Department decided to take on the investigation.<sup>83</sup>

On February 6, 2017, Det. Reeves met with Mr. Benson at his office for the initial interview. This was the first interaction mentioned in Det. Reeves' investigative reports.<sup>84</sup> The meeting appears to have occurred at the police department.<sup>85</sup> In this meeting, Mr. Benson told the detective why he suspected Mr. Fesser was stealing from him. In the reports, Det. Reeves wrote that Mr. Benson first became suspicious when "he noticed he was not making as much money from the weekend auctions as he expected to make."<sup>86</sup> The report further states that Mr. Benson said "he called a few other tow companies and asked them if they were seeing a drop in the prices of vehicles at the auctions. He said they told him they were not."<sup>87</sup> In a later deposition, however, Mr. Benson stated that he never said this to the detective. The civil lawyer specifically asked him about this statement from the report (quoting the police report) and then asked if he said it.<sup>88</sup> Mr. Benson replied "No."<sup>89</sup> The attorney then asked Mr. Benson if he had "any understanding as to why Det. Reeves would put that statement in his police report if you didn't tell him that?"<sup>90</sup> Mr. Benson replied "Not to my knowledge."<sup>91</sup> In addition, the report written by Det. Reeves stated that Mr. Benson also told him an "employee" learned a friend, identified as Marcus Olmos, reported that he had paid a higher price for vehicles than what Mr. Fesser reported.<sup>92</sup> Mr. Benson stated that he gave the name of the employee, Angela Palmer, to the detective.<sup>93</sup> That name was never included in the police reports.

The investigative reports also do not include any questions or information about the relationship between Mr. Fesser, Mr. Benson and the towing company. In reviewing depositions, however, the civil attorneys learned about prior complaints by Mr. Fesser alleging racial discrimination. In 2014, he voiced concerns about a co-worker using the "N" word.<sup>94</sup> In 2016, Mr. Fesser made another racial discrimination complaint against a different employee.<sup>95</sup> The depositions in Mr. Fesser's civil suit also confirmed that Mr. Benson used the "N" word as a "slang" term.<sup>96</sup> This racist sentiment is abundantly clear to Det. Reeves on February 25, 2017, as discussed later in this report, when Mr. Benson sends texts to the detective about "racist boys"

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<sup>81</sup> Transcript of Videotaped Deposition of Tony Reeves, pg. 72 referencing Exhibit 17

<sup>82</sup> Transcript of Videotaped Deposition of Tony Reeves, pg. 79 (Reeves stated that Sgt. Tieg told him that PPB was unwilling to take the case).

<sup>83</sup> Transcript of Videotaped Deposition of Eric Benson, pg. 126-127 (Benson said that in February 2017, Chief Timeus directed him to PPB and then back to the West Linn Police Department), also see pg. 126 (Timeus told him the investigation was better off in West Linn).

<sup>84</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 3.

<sup>85</sup> Transcript of Videotaped Deposition of Tony Reeves, pg. 48.

<sup>86</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 3.

<sup>87</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 3.

<sup>88</sup> Transcript of Videotaped Deposition of Eric Benson, January 23, 2018, pgs. 135.

<sup>89</sup> Transcript of Videotaped Deposition of Eric Benson, January 23, 2018, pgs. 136.

<sup>90</sup> Transcript of Videotaped Deposition of Eric Benson, January 23, 2018, pgs. 136.

<sup>91</sup> Transcript of Videotaped Deposition of Eric Benson, January 23, 2018, pgs. 136.

<sup>92</sup> West Linn Police Report dated 2/24/2017 by Sgt. Reeves, WLPD Case 2017-270, pg. 3.

<sup>93</sup> Transcript of Videotaped Deposition of Eric Benson, January 23, 2018, pgs. 49-50.

<sup>94</sup> Transcript of Videotaped Deposition of Eric Benson, January 23, 2018, pgs. 74 – 81.

<sup>95</sup> Transcript of Videotaped Deposition of Eric Benson, January 23, 2018, pg. 87.

<sup>96</sup> Transcript of Videotaped Deposition of Eric Benson, January 23, 2018, pg. 44.

taking care of Mr. Fesser and people “nigger knocking.”<sup>97</sup> In his deposition, Mr. Benson confirms that he made the racist statements in the text messages.<sup>98</sup>

This historical information about the complaints of racial discrimination is potentially favorable to Mr. Fesser and material to the criminal investigation. While Det. Reeves may not have known about specifics of prior complaints initiated by Mr. Fesser, he admitted being aware of the potential of a racial discrimination lawsuit prior to February 24, 2017,<sup>99</sup> and of course, the discussion of the lawsuit and racial slurs from the February 25, 2017 text exchange. Det. Reeves, however, never mentioned anything in his police reports about the potential racial discrimination lawsuit or the texts.

In his deposition during the Fesser civil suit, when asked about a potential racial discrimination lawsuit, Det. Reeves said that he knew Mr. Benson “was concerned about being sued for racial discrimination” and he was told about such concerns on “multiple occasions.”<sup>100</sup> Again, despite such knowledge, there was nothing about it in Det. Reeves’ police reports. Since Det. Reeves would later delete the text messages between he and Mr. Benson from his cell phone, the weight of the evidence is such that he did so with the intent of suppressing impeachment evidence that should have been included in his investigative reports.

On February 9, 2017, Chief Timeus texted Mr. Benson with Det. Reeves email address.<sup>101</sup> In the text string, Mr. Benson mentioned NW Metals: “I thin he is with nw metals. (sic)”<sup>102</sup> It is unclear who or what he is talking about. Chief Timeus responds “if that is the scrap dude I’m sure, scrappers are dirty.”<sup>103</sup> Mr. Benson says “Yep.”<sup>104</sup> The only connection to this case and NW Metals is witness Robin Palmer, who bought vehicles from A&B Towing auctions for the business. As previously mentioned, Det. Reeves describes in a report that he wanted to try and make contact with Mr. Palmer to obtain records, but that it never happened; the detective inferred that he had a relationship with Mr. Fesser and became uncooperative.<sup>105</sup>

In early-mid February 2017, Mr. Fesser began to consult with an attorney about his employment discrimination claims.<sup>106</sup> On February 11, 2017, A&B Towing employee Brian Dunst (since deceased) conducted his own investigation by documenting the prices, in real time, for the sale of vehicles at an auction run by Mr. Fesser that day. Mr. Dunst was not present at the auction.<sup>107</sup> Another employee, Roger Fulton, who was never interviewed as part of the investigation, attended the auction, and Mr. Dunst listened to the auction on his phone through

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<sup>97</sup> Text Messages, Mr. Benson to Det. Reeves, 2/25/2020.

<sup>98</sup> Transcript of Videotaped Deposition of Eric Benson, January 23, 2018, pg. 44.

<sup>99</sup> Transcript of Videotaped Deposition of Det. Tony Reeves, pg. 95; *also see* Text Messages between Det. Tony Reeves (Poitras) and Mr. Benson, February 25, 2017.

<sup>100</sup> Transcript of Videotaped Deposition of Det. Tony Reeves, pg. 95.

<sup>101</sup> Text Messages between Chief Timeus and Mr. Benson, February 9, 2017, 10:16 am.

<sup>102</sup> Text Messages between Chief Timeus and Mr. Benson, February 9, 2017, 10:16 am.

<sup>103</sup> Text Messages between Chief Timeus and Mr. Benson, February 9, 2017, 10:16 am. *See also*, Transcript of Videotaped Deposition of Det. Tony Reeves, pg. 52.

<sup>104</sup> Text Messages between Chief Timeus and Mr. Benson, February 9, 2017, 10:16 am.

<sup>105</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 6.

<sup>106</sup> According to Mr. Buchanan, he began representing Mr. Fesser in mid-February.

<sup>107</sup> Transcript of Videotaped Deposition of Det. Tony Reeves, pg. 113-114; *See also* West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 3.

Bluetooth and wrote down the prices as they were announced.<sup>108</sup> He then preserved his written document/notes. Those notes were given to Mr. Benson, who then gave them to Det. Reeves.<sup>109</sup> This documentation is referenced in the civil case as "Brian's List." As a result of Mr. Dunst's investigation on February 11<sup>th</sup>, the parties (Mr. Benson, Mr. Dunst and Det. Reeves) concluded that Mr. Fesser recorded lower sales prices for the vehicle(s) sold that day and stole the difference.<sup>110</sup>

Examples of these purportedly fraudulent vehicle purchases are included in Det. Reeves police reports, and include a 2001 Jeep Cherokee purchased by Everything Auto, Inc.<sup>111</sup> The owner, Darryl Anderson, told the detective that he purchased the vehicle for \$250, but the documented price of the sale by Mr. Fesser was allegedly \$225.<sup>112</sup> Mr. Anderson told the detective that he also purchased a 1990 Acura for \$100.00, but according to Mr. Benson and Mr. Dunst the documentation had listed the same sales price.<sup>113</sup> In addition, Fred Marlow also purchased a 1997 Honda Passport for \$150.<sup>114</sup> However, the documentation reviewed by Mr. Benson and Mr. Dunst showed that Mr. Fesser listed the sales price as \$100.<sup>115</sup>

In the *Fesser* civil case, Mr. Marlow was deposed but did not remember anything, nor did he have any records.<sup>116</sup> He said that "in 2017, I was really disorganized" and that he never "wrote down anything" or in any way documented the purchase or price.<sup>117</sup> When asked if he had any way of knowing or proving the purchase price of the Honda Passport on February 11<sup>th</sup>, he said "Right at this time, I don't know. I mean, if you would have asked me before, maybe I would have, but I don't know right now."<sup>118</sup> When asked specifically about the February 11<sup>th</sup> purchase he said "I have no clue" and that "I'm not going to start making up stuff. I don't know."<sup>119</sup>

During the deposition, Mr. Marlow also talked about having memory issues.<sup>120</sup> For example, if he bought a car three days ago he wouldn't remember the purchase price "unless [he] looked at the paperwork that [he] kept in [his] file cabinet."<sup>121</sup> Finally, when asked about Mr. Fesser, it was clear Mr. Marlow did not like him. He told the civil lawyers that Mr. Fesser was a

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<sup>108</sup> Transcript of Videotaped Deposition of Eric Benson Deposition, pg. 140, 226 – 227 ("the auction went through Bluetooth and Brian wrote down the prices that were being announced during the auction"); *also see* pg. 142. *See also* West Linn Police Department report dated 2/24/2017, WLPD case 2017-270, written by Det. Tony Reeves, pg. 3 ("This time Brian Dunst, a manager for A&B Towing had a friend attend the auction. His friend was on the phone with him throughout the auction. Dunst could hear the auction and kept track of the sale price of the vehicles").

<sup>109</sup> Transcript of Videotaped Deposition of Eric Benson, pgs. 141 - 142 (Benson states: "I do not recall if I had it or Brian handed it to the police").

<sup>110</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 3-4.

<sup>111</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 4.

<sup>112</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 4.

<sup>113</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 4.

<sup>114</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 4.

<sup>115</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270pg. 4.

<sup>116</sup> Transcript of Videotaped Deposition of Fred Marlow, pgs. 13 – 18, 19, 23 – 29.

<sup>117</sup> Transcript of Videotaped Deposition of Fred Marlow, pg. 13.

<sup>118</sup> Transcript of Videotaped Deposition of Fred Marlow, pgs. 16 - 17.

<sup>119</sup> Transcript of Videotaped Deposition of Fred Marlow, pgs. 33.

<sup>120</sup> Transcript of Videotaped Deposition of Fred Marlow, pgs. 19 - 20.

<sup>121</sup> Transcript of Videotaped Deposition of Fred Marlow, pgs. 19.

“dick” and that he told the police just that.<sup>122</sup> In this matter, however, the police reports failed to discuss any documentation or lack thereof regarding the February 11<sup>th</sup> purchase, nor was Mr. Marlow able to substantiate the price he paid for the vehicle. In addition, the reports do not mention anything about Mr. Marlow's sentiments regarding Mr. Fesser, which is clearly important information that goes to his bias.

Several days later, it appears that Det. Reeves was trying to follow up with Mr. Benson about ledgers and records. A text from Chief Timeus to Mr. Benson on February 13, 2017 states “Poitras is patiently awaiting your call.”<sup>123</sup> He then sent Mr. Benson the contact number for Det. Reeves (Poitras), again.<sup>124</sup> Chief Timeus also asked Mr. Benson if he “looked at the ledger yet?” and Mr. Benson says “Nope.”<sup>125</sup> The chief asked whether “Numbers match up”<sup>126</sup> but did not receive a response. Then, later that day, Mr. Benson sent a text message to Det. Reeves with his business address and Brian Dunst's contact information.<sup>127</sup> Finally, Sgt. Reeves met with Brian Dunst and Eric Benson at their office to talk about the February 11<sup>th</sup> auction.<sup>128</sup> As previously mentioned, the police reports state:

“Dunst kept track of the sales price of each vehicle (referring to the February 11, 2017, auction) and on February 13<sup>th</sup>, 2017 I met with Dunst and Benson at their office. Fesser drops the auction sheet and the money from the auction into a drop safe at the office. Each vehicle has its own paperwork and the money for each vehicle is in wrapped in paperwork.”<sup>129</sup>

It is our understanding that during this meeting, Mr. Dunst provided Det. Reeves with a copy of the written document that he created, as he wrote down and recorded the vehicle prices during the February 11<sup>th</sup> auction (“Brian's List”).<sup>130</sup> This document purports that 24 of the 46 vehicles at the February 11<sup>th</sup> auction sold for more money than Mr. Fesser reported. This document purporting to describe the alleged thefts from the February 11<sup>th</sup> auction, however, is hardly forensically sound. In fact, it is incomprehensible without interpretation by Mr. Dunst. It is simply a list of sale prices, but does not include any vehicles associated with those numbers; entries are scratched out, and there are question marks by other entries. This leaves many questions about the methods used to produce the document, its accuracy, and attention to detail.

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<sup>122</sup> Transcript of Videotaped Deposition of Fred Marlow, pgs. 23.

<sup>123</sup> Text Messages between Chief Timeus and Mr. Benson, February 13, 2017, 8:35 am. *See also* Deposition of Chief Terry Timeus, pg. 60.

<sup>124</sup> Text Messages between Chief Timeus and Mr. Benson, February 13, 2017, 8:35 am.

<sup>125</sup> Text Messages between Chief Timeus and Mr. Benson, February 13, 2017, 8:35 am.

<sup>126</sup> Text Messages between Chief Timeus and Mr. Benson, February 13, 2017, 8:35 am.

<sup>127</sup> Text Messages between Det. Tony Reeves (Poitras) and Mr. Benson, February 13, 2017, 8:54 am, 1:44 pm. Transcription of Videotaped Deposition of Eric Benson, pg. 170.

<sup>128</sup> Police Reports, West Linn Police Department report dated 2/24/2017, WLPD case 2017-270, written by Det. Tony Reeves, pg. 3.

<sup>129</sup> Police Reports, West Linn Police Department report dated 2/24/2017, WLPD case 2017-270, written by Det. Tony Reeves, pg. 3.

<sup>130</sup> Transcript of Videotaped Deposition of Det. Tony Reeves, pg. 113 (“This is the list Brian Dunst provided me of what he said he heard vehicles sell for over the phone at the auction on February 11, 2016”); Transcript of Videotaped Deposition of Eric Benson, pgs. 141 – 142 (Benson testified that “I do not recall if I handed it or Brian handed it (the written document) to the police”).



On February 15, 2017, Mr. Benson texted Det. Reeves and asked for a call. The text stated "Call me when you have a minute sir: I have something interesting to tell u."<sup>131</sup> Det. Reeves did not respond. Then, Mr. Benson sends another text: "Holy moly sir. If u could call me tonight it would be good."<sup>132</sup> During a later deposition, Mr. Benson was asked about the purpose of the texts and he claimed to "not" recall what the conversation was about.<sup>133</sup>

A day later, Mr. Benson texted the detective again with the contact information for another individual.<sup>134</sup> It is unclear whether this individual played any part in this investigation as the police reports never mention his name. However, it was determined that this individual does own a guided fishing charter business.<sup>135</sup>

On the same day, February 16, 2017, Det. Reeves sent information about his investigation into Pick-n-Pull Cash for Junk Cars, Co.<sup>136</sup> This company also purchased vehicles at the towing auctions. Det. Reeves sent a text message to Mr. Benson stating: "The reason pick and pull stopped coming is they are pulling parts off the cars after the auction."<sup>137</sup> The conversation continues:

- Mr. Benson: "Is that a question?"
- Det. Reeves: "Statement from one of the buyers. For AR Towing."
- Mr. Benson: "Seriously"
- Det. Reeves: "That's what he said."
- Mr. Benson: "Fuck me."<sup>138</sup>

However, the police reports do not mention or document any contact between the detective and Pick-n-Pull, nor does it include a statement(s) from employees, their name(s) or contact information. From the text exchange, it appears that Mr. Benson may have believed the buyers from Pick-n-Pull stopped attending the auction because of Mr. Fesser's alleged criminal conduct, but instead there was another reason.

On February 16<sup>th</sup>, Mr. Benson also contacted Det. Reeves about another alleged victim. He told the detective that a customer contacted him with information about Mr. Fesser stealing.<sup>139</sup> Mr. Benson identified the customer as Nijaz Omerovic and arranged a meeting.<sup>140</sup> On this date, Det. Reeves met with Mr. Omerovic and Mr. Benson at Mr. Benson's office.<sup>141</sup> As

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<sup>131</sup> Text Messages between Mr. Benson to Det. Reeves, 2/15/2017 at 5:04 pm.

<sup>132</sup> Text Messages between Mr. Benson to Det. Reeves, 2/15/2017 at 6:45 pm,

<sup>133</sup> Transcript of Videotaped Deposition of Eric Benson, January 23, 2018, pg. 171.

<sup>134</sup> Transcript of Videotaped Deposition of Eric Benson, January 23, 2018, pg. 171. Text Messages between Mr. Benson to Det. Reeves, 2/16/2017 at 12:15 pm,

<sup>135</sup> The individual's name was subject to a Google search and it was determined he owned a fishing guide service.

<sup>136</sup> Pick-n-Pull Cash for Junk Cars: <https://www.picknpull.com/locations.aspx?View=Detail&ID=118>.

<sup>137</sup> Text Messages between Mr. Benson to Det. Reeves, 2/16/2017 at 2:08 pm,

<sup>138</sup> Text Messages between Mr. Benson to Det. Reeves, 2/16/2017 at 2:13 pm,

<sup>139</sup> Police Reports, West Linn Police Department report dated 2/24/2017, WLPD case 2017-270, written by Det. Tony Reeves, pg. 4.

<sup>140</sup> Police Reports, West Linn Police Department report dated 2/24/2017, WLPD case 2017-270, written by Det. Tony Reeves, pg. 4.

<sup>141</sup> Police Reports, West Linn Police Department report dated 2/24/2017, WLPD case 2017-270, written by Det. Tony Reeves, pg. 4.

mentioned in the previous section of this report, the reports document a statement from Mr. Omerovic claiming that Mr. Fesser “had been stealing from the auction for several years” and that he filled “out two separate auction sheets. One with the real price the vehicle sold for and one with the reported price.”<sup>142</sup> Det. Reeves’ reports fail to elaborate how Mr. Omerovic knew that Mr. Fesser had two auction sheets. In addition, the reports state he told Det. Reeves that Mr. Fesser recently stole \$250 and would not give it back to him.<sup>143</sup> Mr. Omerovic claimed that he was tired of Mr. Fesser stealing and felt it was time to report it.<sup>144</sup> Mr. Omerovic also said that he knew the detective was investigating, because “Darryl” asked him if he contacted the police.<sup>145</sup> The reports, however, never identify the “Darryl” he was referring to, yet one could presume it was Darryl Anderson. During the meeting, Mr. Omerovic promises to provide documentation of the purchases.<sup>146</sup>

In the civil deposition, Mr. Omerovic provided additional details about his relationship with Mr. Benson and the auctions, and told a very different story. Mr. Omerovic testified to knowing Mr. Benson for about five years through a business relationship.<sup>147</sup> He also admitted to personally buying vehicles “on the side” from Mr. Benson in violation of DMV rules.<sup>148</sup> In the police reports, Det. Reeves stated that Mr. Benson told him that Mr. Omerovic contacted him with information about Mr. Fesser;<sup>149</sup> however, in his later deposition Mr. Omerovic stated that Mr. Benson contacted him: “Eric (Benson) told me that he has [an] investigation going in regards to Michael Fesser [and asked] if I can come to [his] office.”<sup>150</sup> Mr. Omerovic could not remember if Mr. Benson told him what it was about, maybe payments and purchases.<sup>151</sup> He also testified that he had no pre-existing knowledge that Mr. Fesser was stealing from the auctions prior to his initial contact with Mr. Benson.<sup>152</sup> This is concerning, because the police reports, as previously mentioned, claim that he told Det. Reeves that Mr. Fesser was stealing for “years”.<sup>153</sup> When questioned about this contradiction during the deposition, Mr. Omerovic said he could “not remember.”<sup>154</sup> In his deposition, Mr. Omerovic also failed to state that he saw Mr. Fesser with two auction sheets.<sup>155</sup>

In the deposition, Mr. Omerovic also admitted that he was mad at Mr. Fesser for bidding against him.<sup>156</sup> He testified this occurred at an auction on November 15, 2017, and the dispute

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<sup>142</sup> Police Reports, West Linn Police Department report dated 2/24/2017, WLPD case 2017-270, written by Det. Tony Reeves, pg. 4.

<sup>143</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 4.

<sup>144</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 4.

<sup>145</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 4.

<sup>146</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270pg. 4.

<sup>147</sup> Transcript of Videotaped Deposition of Nijaz Omerovic, pg. 13.

<sup>148</sup> Transcript of Videotaped Deposition of Nijaz Omerovic, pg. 63.

<sup>149</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 4.

<sup>150</sup> Transcript of Videotaped Deposition of Nijaz Omerovic, pg. 15.

<sup>151</sup> Transcript of Videotaped Deposition of Nijaz Omerovic, pg. 25.

<sup>152</sup> Transcript of Videotaped Deposition of Nijaz Omerovic, pgs. 23 – 30, 91-94.

<sup>153</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270pg. 4.

<sup>154</sup> Transcript of Videotaped Deposition of Nijaz Omerovic, pgs. 31.

<sup>155</sup> Transcript of Videotaped Deposition of Nijaz Omerovic, pgs. 23 – 30, 91-94.

<sup>156</sup> Transcript of Videotaped Deposition of Nijaz Omerovic, pg. 25; 78-81.

was over a Subaru vehicle.<sup>157</sup> He also claimed that Mr. Fesser was taking bids over the phone and driving up prices.<sup>158</sup> During the deposition, Mr. Omerovic was also questioned about a text conversation between Mr. Fesser and himself, where he threatened to “get him (Mr. Fesser) back” and “I will pay back and Karma is a bitch.”<sup>159</sup>

Mr. Omerovic also testified that he met with two police officers at Mr. Benson's office.<sup>160</sup> He said he was unsure or could not remember all of the details of the meeting.<sup>161</sup> Nonetheless, he said that prior to the meeting Mr. Benson asked him to provide documentation.<sup>162</sup> In the police reports, the detective said that Mr. Omerovic provided him with the paperwork during the initial interaction, which Mr. Omerovic confirmed during his civil deposition.<sup>163</sup> The evidence suggests that Mr. Omerovic also gave copies to Mr. Benson as well, who compared it with the auction sheets, and then followed up with the detective about his analysis.<sup>164</sup> When asked about the documentation he provided, Mr. Omerovic admitted to bringing documents for 4 to 5 car purchases, but that he still had all the records for purchases he made at the A&B Towing auctions.<sup>165</sup> He says that he only brought documentation for those transactions because they were recent.<sup>166</sup> He further explained that the West Linn police never asked him for all the records.<sup>167</sup>

The civil attorneys confirmed that Mr. Omerovic's recordkeeping practices included handwritten notes about the sales price of a vehicle.<sup>168</sup> When questioned about the purchase of a 2000 Toyota Tacoma, the documentation stated that he wrote down \$1,870.00, but he admitted to writing down the wrong number – the actual price was \$2,500.<sup>169</sup> He said he did not realize the mistake when he was talking to the police.<sup>170</sup> In summary, there are vast discrepancies between Mr. Omerovic's statements in the investigative police reports and his civil deposition testimony that are very concerning.

On February 17, 2017, it appears that Det. Reeves and Mr. Benson may have met again. There was a text between Mr. Benson to the detective asking “What time are you coming by?”<sup>171</sup>

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<sup>157</sup> Transcript of Videotaped Deposition of Nijaz Omerovic, pg. 78-82.

<sup>158</sup> Transcript of Videotaped Deposition of Nijaz Omerovic, pg. 25; 86-87.

<sup>159</sup> Transcript of Videotaped Deposition of Nijaz Omerovic, pg. 85-87.

<sup>160</sup> Transcript of Videotaped Deposition of Nijaz Omerovic, pg. 15.

<sup>161</sup> Transcript of Videotaped Deposition of Nijaz Omerovic, pg. 28 – 35.

<sup>162</sup> Transcript of Videotaped Deposition of Nijaz Omerovic, pg. 23.

<sup>163</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270 pg. 4; Transcript of Videotaped Deposition of Nijaz Omerovic, pg. 23 – 28.

<sup>164</sup> Transcript of Videotaped Deposition of Nijaz Omerovic, pg. 29-35; Text Messages between Mr. Benson to Det. Reeves, 2/18/2017.

<sup>165</sup> Transcript of Videotaped Deposition of Nijaz Omerovic, pg. 43.

<sup>166</sup> Transcript of Videotaped Deposition of Nijaz Omerovic, pg. 42-44.

<sup>167</sup> Transcript of Videotaped Deposition of Nijaz Omerovic, pg. 112.

<sup>168</sup> Transcript of Videotaped Deposition of Nijaz Omerovic, pg. 26, 46 - 47.

<sup>169</sup> Transcript of Videotaped Deposition of Nijaz Omerovic, pg. 53-54.

<sup>170</sup> Transcript of Videotaped Deposition of Nijaz Omerovic, pg. 55.

<sup>171</sup> Text Messages between Mr. Benson to Det. Reeves, 2/17/2017 at 9:47 am.

When questioned about the meeting, both Det. Reeves and Mr. Benson failed to recall whether they met.<sup>172</sup>

On February 18, 2017, Mr. Benson contacted Det. Reeves about Mr. Omerovic's paperwork. Mr. Benson texts "These are the two I sent u from Neil this weekend" and "Looks like a difference of 2690.00 on these two."<sup>173</sup> ("Neil" is believed to be Mr. Omerovic). Mr. Benson then texted a few photo images of paperwork from Mr. Omerovic.<sup>174</sup> During the uploading and texting of this documentation, the detective asked "Did he drop that paperwork off yesterday".<sup>175</sup> The detective clarified: "I mean the 2016 from Messer"<sup>176</sup> Mr. Benson replied, "Brian is suppose to let me know today."<sup>177</sup> It is unclear what or who is "Messer" (it was possibly a typo and meant to be "Fesser") and/or whether such a document was ever provided.

In the days after February 18, 2017, it appears that Brian Dunst continued with his own investigation. The police reports written by Det. Reeves state the following:

"Brian Dunst attempted to retrieve all auction records from the tow yard and the 2016 auction file was missing. Benson asked Fesser about the files and Fesser stated he had them at home so he could do a "collections report". Benson told me the report used to be done at the office the day of the auction. We decided not to push Fesser for the file at this time as to not tip him off to the investigation."<sup>178</sup>

It is important to note that Det. Reeves apparently never interviewed Mr. Dunst about this investigation, given that no such statement was included in his police reports. The extent of Mr. Dunst's actions and involvement in this case are therefore uncertain. Nonetheless, the texts further reveal that he and Mr. Benson were actively investigating the case and most of the information provided to Det. Reeves, and then relied on in the criminal case (and information in the police reports) was from the Dunst/Benson investigation. For this reason, the lack of a detailed statement from Dunst is stark and inexplicable.

On February 21, 2017, Chief Timeus texted Mr. Benson that Det. Reeves was finishing up his case and they intended to arrest Mr. Fesser after the February 25, 2017, auction at A&B Towing. The text messages states:

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<sup>172</sup> Transcript of Videotaped Deposition of Eric Benson, pgs. 172-73 ("I don't recall. I could have."); Transcript of Videotaped Deposition of Det. Tony Reeves, pgs. 121-122 ("I don't remember that meeting, no, if he came by or not.").

<sup>173</sup> Text Messages between Mr. Benson to Det. Reeves, 2/18/2017 at 11:31-11:32 am,

<sup>174</sup> Text Messages between Mr. Benson to Det. Reeves, 2/18/2017 at 11:31 am, 11:50 am, 11:53 am,.

<sup>175</sup> Text Messages between Mr. Benson to Det. Reeves, 2/18/2017 at 11:48 am. The message appears to reference Mr. Omerovic's documentation because a copy of such document(s) are then sent/texted to Det. Reeves. Transcript of Videotaped Deposition of Det. Toney Reeves, pg. 122 (Detective confirms "he" was referring to Omerovic and the paperwork).

<sup>176</sup> Text Messages between Mr. Benson to Det. Reeves, 2/18/2017 at 11:52 am.

<sup>177</sup> Text Messages between Mr. Benson to Det. Reeves, 2/18/2017 at 11:57 am.

<sup>178</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270 pg. 4.

“Talked to Poitras, he is finishing up a sex case and will have your case ready to go before Saturday. He plans on hooking him right after the auction, in hopes your missing records are in his car. If I hear more I'll let you know.”<sup>179</sup>

The fact that the Chief of Police is texting his friend and sharing operational information regarding the future date and location of the arrest is inappropriate and further contributes to the appearance of collusion.

On February 22, 2017, PPB Sergeant Cheryl Waddell emailed Det. Reeves about contacting the Oregon Department of Justice (DOJ) about the Fesser case. It was the impression from Lt. Stradley that the case was being passed around within PPB to different supervisors and investigators, and that PPB was “completely blowing it off and didn't want anything to do with it [the case], they just weren't interested,” hence the referral to the Oregon DOJ.<sup>180</sup> However, it appears that neither Det. Reeves, or anyone from the West Linn Police Department, reached out to the Oregon DOJ. Given the February 21<sup>st</sup> text from Chief Timeus, the WLPD apparently was almost done with the investigation, and prepared to make an arrest; failing to explore more appropriate and qualified avenues for the investigation.

On February 21/22, 2017, preparations were being made to attend the February 25<sup>th</sup> auction. Mr. Benson had already spoken to Det. Reeves<sup>181</sup> and Mr. Omerovic about attending. Mr. Omerovic stated during his deposition that both Mr. Benson and the police department asked him to make an appearance<sup>182</sup> but they never gave him a reason or explanation.<sup>183</sup> In addition, as mentioned previously, PPB agreed to assist in the stop and arrest.

On February 23, 2017, Det. Reeves texted Mr. Benson and asked about the starting time for the auction. Mr. Benson responded with a request to meet. The text exchange included the following<sup>184</sup>:

- Det. Reeves: “What time is the auction Saturday?? And about how long do they last.” (8:28 am)
- Mr. Benson: “Can I come down and talk about that today? Like 10 am. I've been thinking about a couple of things.” (8:29/8:30 am).
- Det. Reeves: “Yes.” (9:14 am).
- Mr. Benson: “Running a few behind. Had to take my daughter to doc. My wife is out of town. She has a concussion.” (9:55 am).

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<sup>179</sup> Text Messages between Mr. Benson to Chief Timeus, 2/21/2017 at 1:37 pm; *See also* Transcript of Videotaped Deposition of Chief Terry Timeus, pg. 101, and Transcript of Videotaped Deposition Transcript of Det. Tony Reeves, pg. 152 (Det. Reeves testified “yes” that he planned to arrest Mr. Fesser before the auction regardless of what happened at the auction), and Transcript of Videotaped Deposition of Eric Benson, pg. 180 (Mr. Benson was asked if that was his expectation that on 2/25 that Det. Reeves was going to arrest Mr. Fesser and he replied “That is what he told me was going to happen.”).

<sup>180</sup> Transcript of Videotaped Deposition of Lt. James Stradley, pg. 67.

<sup>181</sup> Transcript of Videotaped Deposition of Eric Benson, pg. 174.

<sup>182</sup> Transcript of Videotaped Deposition of Nijaz Omerovic, pg. 77.

<sup>183</sup> Transcript of Videotaped Depositions of Nijaz Omerovic, pg. 77 - 78.

<sup>184</sup> Text Messages between Mr. Benson to Det. Reeves, 2/23/2017 at 8:28 am – 9:57 am.

- Det. Reeves: "No worries. I am here." (9:57 am).

During the depositions, neither Det. Reeves nor Mr. Benson could remember what they talked about during this meeting.<sup>185</sup> Afterwards, Mr. Benson texted the detective a series of addresses to include his home, business and manager's home.<sup>186</sup> The texts state:

- Mr. Benson: "[Texts home and business address]. I don't care about the rest." (11:07 am)
- Mr. Benson: "They are unnamed lots." (11:07 am)
- Mr. Benson: "[Manager's Address]" (11:07 am)
- Mr. Benson: "My managers house." (11:07 am)

The next day, February 24<sup>th</sup>, the detective and Mr. Benson continued to communicate. The texts state:<sup>187</sup>

- Mr. Benson: "Call me if u can" (1:08 pm).
- Det. Reeves: "No cars." (1:32 pm).

Later in the afternoon, Mr. Benson sent additional texts about going by Mr. Fesser's dealership:<sup>188</sup>

- Mr. Benson: "Did u go his dealership" (3:37 pm).
- Mr. Benson: "By his dealership" (3:37 pm).
- Det. Reeves: "I did not. Too busy getting everything done for tomorrow." (3:38 pm)
- Det. Reeves: "Ok." (3:38 pm).

It was on this date that Det. Reeves authored his first investigative report summarizing evidence collected so far, including statements by Mr. Benson, Mr. Omerovic, Marcos Olmos and Brian Dunst.<sup>189</sup> In his deposition, Det. Reeves admitted that when he wrote the police report(s), he was aware of the relationship between Chief Timeus and Mr. Benson, but did not include that information.<sup>190</sup>

On February 25, 2017, Det. Reeves and Det. Boyd attended an A&B Towing auction managed by Mr. Fesser. The detectives were present at the auction, while Mr. Benson and Mr. Dunst were listening through an application (SwannView App).<sup>191</sup> Det. Reeves and Mr. Benson were in constant contact by text throughout the auction. As noted above, Det. Reeves and Mr. Benson asked Mr. Omerovic to show up.<sup>192</sup> During his deposition, Mr. Omerovic said he was not

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<sup>185</sup> Transcript of Videotaped Deposition of Eric Mr. Benson, pg. 175.

<sup>186</sup> Text Messages between Mr. Benson to Det. Reeves, 2/23/2017 at 11:07 am – 11:22 am.

<sup>187</sup> Text Messages between Mr. Benson to Det. Reeves, 2/23/2017 at 1:08 pm – 1:32 pm.

<sup>188</sup> Text Messages between Mr. Benson to Det. Reeves, 2/23/2017 at 3:37 pm – 3:38 pm.

<sup>189</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 1-5 ("Date/Time 02/24/2017"); Transcript of Videotaped Deposition of Det. Tony Reeves, pg. 65-66 (testified that he completed his report on 2/24).

<sup>190</sup> Transcript of Videotaped Deposition of Det. Tony Reeves, pg. 99 – 100.

<sup>191</sup> Transcript of Videotaped Deposition of Eric Benson, pg. 191 and 205 (Mr. Benson said he as at home listening on the app – "Brian and I both.")

<sup>192</sup> Transcript of Videotaped Deposition of Nijaz Omerovic, pg. 77 - 78.

told anything or given a reason to attend, but was simply asked to be there.<sup>193</sup> A text message obtained from Mr. Benson's phone during the civil case corroborated Mr. Omerovic's testimony<sup>194</sup>:

- Mr. Benson: "Do I see Neil?" (12:47 pm)
- Mr. Benson: "U" (12:47 pm)
- Det. Reeves: "Not yet." (12:47 pm)
- Mr. Benson: "Fucking pussy he is. If he doesn't show that's an issue" (12:48 pm)
- Det. Reeves: "I got this!!" (12:48 pm)

About a half hour later, Mr. Omerovic arrived. Det. Reeves sent a text to Mr. Benson stating "Neil is here."<sup>195</sup> It is clear from the text messages that Det. Reeves had preexisting knowledge of the fact Mr. Omerovic was asked to attend, but he never included any of this information in any report as to the role Mr. Omerovic was supposed to play in this investigation.

As mentioned, the detectives were present at the auction while Mr. Benson and Mr. Dunst were listening through the SwannView App, which was being operated by another employee; and the conversation was recorded.<sup>196</sup> Mr. Benson testified that was the only auction ever recorded.<sup>197</sup> During his deposition, Mr. Benson was asked whether Mr. Fesser was advised or aware of the recording and he said "I'm not sure. There is a sign up [and] I believe it says 'surveillance and audio.'"<sup>198</sup> The recording included conversations that Mr. Fesser had with other employees, such as Daniel Danton (see text messages), where Mr. Fesser was allegedly "making comments about the race thing;"<sup>199</sup> and based on the text messages, he was also talking to people about "lists" and "playing the race card."<sup>200</sup>

In a later deposition, the civil lawyers asked Det. Reeves about the recording. When asked if people at the auction were made aware that it was being recorded, he said "I don't know if there is or not."<sup>201</sup> He was then asked if he was concerned about recording without the knowledge and consent of the other people present and he said "I wasn't, no."<sup>202</sup> He did acknowledge that he was aware it was a violation of Oregon law.<sup>203</sup> He was then asked again if he was worried about it and the detective said "it didn't cross my mind, no."<sup>204</sup> Finally, he

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<sup>193</sup> Transcript of Videotaped Deposition of Nijaz Omerovic, pg. 77 - 78.

<sup>194</sup> Text Messages between Mr. Benson to Det. Reeves, 2/25/2017 at 12:47 pm – 12:48pm; Transcript of Videotaped Deposition of Nijaz Omerovic, pg. 82 – 83 (Mr. Omerovic testifies about the text messages while confirming he was asked to attend).

<sup>195</sup> Text Messages between Mr. Benson to Det. Reeves, 2/25/2017 at 1:22 pm.

<sup>196</sup> Transcript of Videotaped Deposition of Eric Benson, pg. 191 and 205 (Mr. Benson said he as at home listening on the app – "Brian and I both.")

<sup>197</sup> Transcript of Videotaped Deposition of Eric Benson, pg. 73.

<sup>198</sup> Transcript of Videotaped Deposition of Eric Benson, pg. 181.

<sup>199</sup> Transcript of Videotaped Deposition of Eric Benson, pg. 182.

<sup>200</sup> Text Messages between Mr. Benson to Det. Reeves, 2/25/2017 at 10:35 am – 10:37 am, 10:42 am, 12:55 pm – 12:56 pm.

<sup>201</sup> Transcript of Videotaped Deposition of Det. Tony Reeves, pg. 85-86.

<sup>202</sup> Transcript of Videotaped Deposition of Det. Tony Reeves, pg. 86.

<sup>203</sup> Transcript of Videotaped Deposition of Det. Tony Reeves, pg. 86.

<sup>204</sup> Transcript of Videotaped Deposition of Det. Tony Reeves, pg. 86.

claimed that he did “not know that it was being recorded or not. I knew it was being monitored.” When asked if he was told the auction was being recorded through the SwannView App, he said “I don’t remember what I was told.”<sup>205</sup> Later in the deposition, Det. Reeves would acknowledge he knew the auction was being recorded.<sup>206</sup>

During his deposition, Mr. Benson said the recording still existed and it was at his attorney’s office.<sup>207</sup> He also stated that it could be copied/duplicated.<sup>208</sup> The fact that Mr. Benson and Mr. Dunst were listening to the auction, and to Mr. Fesser’s conversations, were facts never included in the police reports in this case; neither was the actual recording itself.

The text communications on February 25, 2017, between Mr. Benson and Det. Reeves include the following:<sup>209</sup>

- Mr. Benson: “We are doing the right thing, right?” (9:20 am). Det. Reeves does not respond.
- Mr. Benson: “When he (Fesser) was making the list last night he was asking Daniel if anything weird was going on. Daniel said no.” (10:35 am). In a later deposition, Mr. Benson says that Mr. Fesser was talking to another employee by the name of Daniel Danton.<sup>210</sup>
- Mr. Benson: “And he was making comments about the race thing to Daniel.” (10:37 am)
- Det. Reeves: “That’s fine. Pulling the race card isn’t a get out of jail free card. He is robbing you blind.” (10:42 am).
- Mr. Benson: “For sure” (10:44 am).
- Det. Reeves: “Auction starts at 1 right?” (10:58 am).
- Mr. Benson: “I would go early and look around. U can be there at 12. Look like a dirt bag.” (10:59 am).
- Det. Reeves: “Ok and I do.” (11:01 am).

The second text string(s) between Mr. Benson and Det. Reeves occurs after the detectives arrive at the auction. The conversations illustrate concerning and inappropriate banter. The first message is sent at 12:36 pm from Det. Reeves who states “People buy this shit?!”.<sup>211</sup> A few minutes later, the detective follows up with another text stating “Today his (Fesser’s) reign of terror ends.”<sup>212</sup> The two individuals continue to discuss the auction and confirm that Mr. Fesser is present. At 12:47 pm, they talk about Mr. Omerovic’s attendance as previously mentioned.<sup>213</sup> The conversation then turns to the racial discrimination lawsuit. Mr. Benson texts “He knows for

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<sup>205</sup> Transcript of Videotaped Deposition of Det. Tony Reeves, pg. 88.

<sup>206</sup> Transcript of Videotaped Deposition of Det. Tony Reeves, pg. 165

<sup>207</sup> Deposition of Videotaped Deposition of Eric Benson, pg. 73.

<sup>208</sup> Deposition of Videotaped Deposition of Eric Benson, pg. 73 - 74.

<sup>209</sup> Text Messages between Mr. Benson to Det. Reeves, 2/25/2017 at 9:20 am – 11:01 am.

<sup>210</sup> Deposition of Videotaped Deposition of Eric Benson, pg. 180-181.

<sup>211</sup> Text Messages between Mr. Benson to Det. Reeves, 2/25/2017 at 12:36 pm.

<sup>212</sup> Text Messages between Mr. Benson to Det. Reeves, 2/25/2017 at 12:40 pm.

<sup>213</sup> Text Messages between Mr. Benson to Det. Reeves, 2/25/2017 from 12:47 pm – 12:48 pm.



sure. Totally on to us. Playing the racist card with guy in the office”<sup>214</sup>. The conversation continues:<sup>215</sup>

- Mr. Benson: “He is playing the race card big time. Fuck” (12:56 pm).
- Mr. Benson: “He’ll sue the shit out of me.” (12:56 pm).
- Det. Reeves: “I have a solid case.” (12:57 pm).
- Mr. Benson: “I’m shitting myself after what I heard” (12:58 pm).
- Det. Reeves: “Stop. I have 6 whitenesses (sic)” (1:00 pm).
- Mr. Benson: “They are dirty.” (1:00 pm).

The detective then tries to reassure Mr. Benson about the criminal investigation. He says “the case is already solid.”<sup>216</sup> To which Mr. Benson asks “100 percent solid? I’m scared of a huge lawsuit.”<sup>217</sup> Det. Reeves confirms that its “100%”<sup>218</sup> solid. Then he mentions that “Neil”<sup>219</sup> (Omerovic) had arrived. The conversation continues to include friendly banter. Det. Reeves pretends that he is insecure about the case and texts “Fuck this I’m scared you’re on your own!! No I’m 3 blocks away.”<sup>220</sup> The conversation continues:<sup>221</sup>

- Mr. Benson: “U fucking wedge.” (1:58 pm).
- Det. Reeves: “I learned from you!!” (1:58 pm).
- Mr. Benson: “Pay backs are a bitch. I know your boss. He likes playing with my balls.” (1:59 pm).
- Det. Reeves: “Um ok. Too much information.” (1:59 pm).

The parties then talk about the auction for twenty minutes before Mr. Benson texts that Mr. Fesser is “pulling the race card again”<sup>222</sup>:

- Mr. Benson: “He is pulling the race card again with a bunch of people. Saying we are getting rid of him for bidding shit up. Three of my driver’s he is talking about. Saying he is pissing in cups for drivers. Now he is talking about the list.” (2:26 pm).
- Det. Reeves: “so maybe he doesn’t know the police are looking at him.” (2:26 pm).
- Mr. Benson: “Totally going off about black and white to white guys” (2:26 pm).

The men then talk about how Mr. Fesser is “covering his ass”<sup>223</sup> and their plan to arrest when the auction is done. Mr. Benson then texts that Mr. Fesser is playing the “Big time race card. I need

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<sup>214</sup> Text Messages between Mr. Benson to Det. Reeves, 2/25/2017 at 12:50 pm.

<sup>215</sup> Text Messages between Mr. Benson to Det. Reeves, 2/25/2017 from 12:56 pm – 1:00 pm.

<sup>216</sup> Text Messages between Mr. Benson to Det. Reeves, 2/25/2017 at 1:06 pm.

<sup>217</sup> Text Messages between Mr. Benson to Det. Reeves, 2/25/2017 at 1:07 pm.

<sup>218</sup> Text Messages between Mr. Benson to Det. Reeves, 2/25/2017 at 1:07 pm.

<sup>219</sup> Text Messages between Mr. Benson to Det. Reeves, 2/25/2017 at 1:22 pm.

<sup>220</sup> Text Messages between Mr. Benson to Det. Reeves, 2/25/2017 at 1:57 pm.

<sup>221</sup> Text Messages between Mr. Benson to Det. Reeves, 2/25/2017 from 1:58 pm – 1:59 pm.

<sup>222</sup> Text Messages between Mr. Benson to Det. Reeves, 2/25/2017 at 2:36 pm.

<sup>223</sup> Text Messages between Mr. Benson to Det. Reeves, 2/25/2017 at 2:28 pm.

a drink.<sup>224</sup> The conversation then flows into more banter that is inappropriate but with a racial tone:<sup>225</sup>

- Det. Reeves: "That's funny cuz I'm talking shit about you as well." (2:35 pm).
- Mr. Benson sends an emoji with a hand extending the middle finger. (2:36 pm).
- Mr. Benson: "Funny cause your boss is in my family room looking at your posts on grinder" (2:37 pm).
- Det. Reeves texts a smiley face emoji blowing a heart-kiss. (2:37 pm).
- Mr. Benson: "U sick bastard." (2:38 pm).
- Det. Reeves: "1.3 miles away from Clackamas county. .3 miles too far to prosecute there." (2:39 pm).
- Mr. Benson: "I know right. If he went there I would make sure he never got out." (2:39 pm).
- Mr. Benson: "And make sure he was with some real racist boys." (2:41 pm).
- Mr. Benson: "Dreams can never come true I guess" (2:41 pm).
- Mr. Benson: "Oh did I say that? I'm a bad person. I have some anger issues going on with him right now." (2:43 pm).
- Det. Reeves: "I can't imagine why." (2:44 pm).
- Mr. Benson: (Talking about Mr. Fesser) "He is confiding in the guy with the weird coat." (2:44 pm).
- Det. Reeves: "He needs to hurry up already." (2:46 pm).
- Mr. Benson: "No shit" (2:50 pm).
- Det. Reeves: "Impressed how well you [unintelligible] while being t-bagged by the chief!" (2:50 pm).
- Mr. Benson: "Funny he is telling me how u got promoted to detective. I guess u took good care of him." (2:52 pm).

The men then turn their conversation back to the auction. At one point, there is a mention by Mr. Benson that he learned from Brian Dunst there were "two lists"<sup>226</sup> but that fact was never clarified during the course of the investigation; meaning the purpose of two lists or whether they were recovered. For the next hour, the messages include conversations about what is happening on the floor of the auction, then the topic of the lawsuit comes up, followed by more banter resulting in another racial slur<sup>227</sup>:

- Det. Reeves: "You're acting like a wedge again." (4:15 pm).
- Mr. Benson: "No I'm not. Fuck him." (4:15 pm).
- Det. Reeves: "When people steal from you and you catch them. Lawsuits don't go very well." (4:15 pm).
- Mr. Benson: "Back to talking about suing me" (4:17 pm).
- Det. Reeves: "I'm about to sue you for being a pussy." (4:18 pm).

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<sup>224</sup> Text Messages between Mr. Benson to Det. Reeves, 2/25/2017 at 2:30 pm.

<sup>225</sup> Text Messages between Mr. Benson to Det. Reeves, 2/25/2017 from 2:35 pm – 2:52 pm.

<sup>226</sup> Text Messages between Mr. Benson to Det. Reeves, 2/25/2017 at 3:14 pm.

<sup>227</sup> Text Messages between Mr. Benson to Det. Reeves, 2/25/2017 at 4:15 pm – 4:28 pm.

- Mr. Benson: "Don't make me sick my vicious 45 pounds lab on you" (followed by a text picture of his dog on his bed) (4:19 pm).
- Mr. Benson: "Vicious I tell u." (4:20 pm).
- Det. Reeves: "What the fuck is that bed??" (4:20 pm).
- Mr. Benson: "Lol. It's a bean bag. Only the best for her. She cost me a lot of money. Trained killer. For birds that is" (4:21 pm).
- Det. Reeves: "Hope Fesser doesn't get her in the law suit." (4:22 pm).
- Mr. Benson: "Hahaha. She is not a fan of that type of folk. She is a wl dog" (4:22 pm).
- Det. Reeves: "Just starting to rain. I bet (inaudible) leave now." (4:24 pm).
- Mr. Benson: "Now my daughters boyfriends are nigger knocking me." (4:25 pm).
- Mr. Benson: "Just ran them off." (4:25 pm).
- Mr. Benson: "That was racist sir." (4:27 pm).
- Mr. Benson: "His buddy sued me for an employee saying it's raining." (4:28 pm).
- Det. Reeves: "Really?? Wow." (4:28 pm).
- Mr. Benson: "Yep" (4:28 pm).

For the next ten minutes, the men talk more about the auction and then focus on the arrest. The texts state:

- Mr. Benson: "He has to go soon. Has to meet someone at his dealership. I'm curious if he goes to my office to drop my money. This is taking way to long. To much copying. Never used to be like this." (4:36 pm).
- Det. Reeves: "I bet he won't drop it off. Fighting Trip!?" (4:37 pm).
- Mr. Benson: "(inaudible) shit. You'll stop him before he does." (4:37 pm).
- Det. Reeves: "My game my rules!!" (4:38 pm).
- Mr. Benson: "That's gay." (4:38 pm).

At that point during the conversation, it appears that Mr. Fesser had completed the paperwork and is preparing to leave the auction. At 4:48 pm, Mr. Benson is texting about the auction paperwork and money, and sends the detective a picture of both. Mr. Benson is then relaying by text what is happening with Mr. Fesser, in order to coordinate and prepare for the arrest, but the banter does not stop. Mr. Benson complains how long this is taking and that "this is cutting into cocktail hour"<sup>228</sup> to which the detective responds "I'm fucking starving at this point."<sup>229</sup> In response, Mr. Benson says "U fucking pussy. Want me to bring u a donut? Who has the wedge now?" (with a few emojis)<sup>230</sup>. And the detective says "still you."<sup>231</sup> The rest of the text messages involve Mr. Benson relaying more information to the detective about Mr. Fesser's whereabouts and then communication about his arrest.

These text messages and conversations between Det. Reeves and Mr. Benson are impeachment evidence as they demonstrate Mr. Benson's motive to fabricate due to his racial bias. They expose an improper relationship and banter between a detective and an alleged victim

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<sup>228</sup> Text Messages between Mr. Benson to Det. Reeves, 2/25/2017 at 5:17 pm.

<sup>229</sup> Text Messages between Mr. Benson to Det. Reeves, 2/25/2017 at 5:17 pm.

<sup>230</sup> Text Messages between Mr. Benson to Det. Reeves, 2/25/2017 at 5:19 pm.

<sup>231</sup> Text Messages between Mr. Benson to Det. Reeves, 2/25/2017 at 5:19 pm.

of a crime. They include racial epithets and slurs, derogatory and offensive language, references to numerous witnesses about them being “dirty,” insecurity about the investigation, and a strong motive to fabricate these allegations to avoid civil liability in a racial discrimination lawsuit. Det. Reeves, however, never documented any of law enforcement's activities at the February 25<sup>th</sup> auction in his police reports. He never documented Mr. Benson's concerns Mr. Fesser was going to file a racial discrimination lawsuit against him. Furthermore, he never wrote about Mr. Benson's proclivity to use racial slurs, consistent with a history of using the “N” word by both Mr. Benson and employees within his company. When questioned about Mr. Benson's use of the “N” word on February 25<sup>th</sup> during his civil deposition, Det. Reeves acknowledged that “it made me realize I dealt with a guy who used racist terms and was racially insensitive.”<sup>232</sup>

Despite this realization, the detective admitted to deleting racially charged text messages between he and Mr. Benson from his cell phone.<sup>233</sup> In fact, Mr. Fesser's civil attorney asked both Mr. Benson and the detective for a copy of any text conversations through the formal subpoena process. However, it was too late to get this information from Det. Reeves, because he had already removed the text messages from his phone.<sup>234</sup> More specifically, Mr. Fesser's attorney issued a subpoena in October of 2017, requesting text messages from Det. Reeves.<sup>235</sup> During his deposition, the civil attorney asked the detective what he did in response to the subpoena. He testified “I looked on my phone to see if there were any text messages there and there were not.”<sup>236</sup> He was then asked the specific question, “so your testimony is that in October 2017 you had no text messages on either of your phones about Mr. Fesser?” and he responded “It is, yes.”<sup>237</sup> When asked specifically when it was he deleted the messages he said “I don't have any idea.”<sup>238</sup> Finally, when asked if the act of deleting the messages was intentional he said “yeah, you have to intentionally delete them”<sup>239</sup> and when he was asked why he did it, the detective responded “The case was over and I did not realize that it would come back up.”<sup>240</sup> However, the case was not over. On the date that he received the subpoena, the Multnomah County Grand Jury had yet to convene. If it wasn't for Mr. Benson complying with his civil subpoena to produce the text messages, nobody would have discovered they existed.

Concerning the February 25<sup>th</sup> auction, Det. Reeves also admitted he took notes about the car sales.<sup>241</sup> He explained that he used the auction sheet.<sup>242</sup> That item and those notes were not included with the reports.<sup>243</sup> In addition, he acknowledged he did not supply this information to the Multnomah County District Attorney's Office, and could not remember if he had discarded them, but nonetheless did not have the notes.<sup>244</sup>

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<sup>232</sup> Transcript of Videotaped Deposition of Det. Tony Reeves, pg. 181.

<sup>233</sup> Transcript of Videotaped Deposition of Det. Tony Reeves, pg. 222 – 223 (Det. Reeves: “\* \* \*you have to intentionally delete them.”).

<sup>234</sup> Transcript of Videotaped Deposition of Det. Tony Reeves, pg. 222.

<sup>235</sup> Transcript of Videotaped Deposition of Det. Tony Reeves, pg. 222.

<sup>236</sup> Transcript of Videotaped Deposition of Det. Tony Reeves, pg. 222.

<sup>237</sup> Transcript of Videotaped Deposition of Det. Tony Reeves, pg. 222.

<sup>238</sup> Transcript of Videotaped Deposition of Det. Tony Reeves, pg. 223.

<sup>239</sup> Transcript of Videotaped Deposition of Det. Tony Reeves, pg. 223.

<sup>240</sup> Transcript of Videotaped Deposition of Det. Tony Reeves, pg. 222.

<sup>241</sup> Transcript of Videotaped Deposition of Det. Tony Reeves, pgs. 90-91.

<sup>242</sup> Transcript of Videotaped Deposition of Det. Tony Reeves, pgs. 90-91.

<sup>243</sup> Transcript of Videotaped Deposition of Det. Tony Reeves, pgs. 90-91.

<sup>244</sup> Transcript of Videotaped Deposition of Det. Tony Reeves, pgs. 90-91.

Once the auction was over on February 25<sup>th</sup>, the WLPD, with assistance of PPB, stopped Mr. Fesser in his vehicle and arrested him. This was purportedly a traffic stop and arrest based on probable cause he had committed the crime of theft through the scheme previously explained in this report. The police also searched Mr. Fesser's vehicle. In Det. Reeves' police report he states:

"I searched the Land Rover he was driving at the time of his arrest and collected several items that appeared to have evidentiary value to this case. This included the auction list, a title to a vehicle sold at the auction with \$500.00 attached to it and several other documents labeled with A&B Towing."<sup>245</sup>

Det. Reeves continues to explain in his reports that he later went through the seized items in more detail.<sup>246</sup> He noticed the paperwork with the \$500 attached to it was a title for a vehicle owned by Fesser's dealership, paperwork belonging to his dealership, and communications between Mr. Fesser and a law firm.<sup>247</sup>

Det. Reeves's report says that he sealed the items and then returned them to Mr. Fesser a few days later.<sup>248</sup> The reports fail to mention, however, that he seized Mr. Fesser's cell phone. In his deposition during the civil case, Det. Reeves talked about seizing the cell phone because he had considered doing a search warrant, but then decided not to seek one.<sup>249</sup> He also admitted that he did not log and secure the phone into the property room, but instead left it on his desk for three days before giving it back to Mr. Fesser.<sup>250</sup> But perhaps most inexplicable and concerning, is the fact that a draft of a letter Mr. Fesser intended to send to Mr. Benson, through the assistance of his attorney, was seized and then *subsequently given to Mr. Benson by Det. Reeves.*<sup>251</sup>

In his deposition, Det. Reeves admitted to seeing a letter addressed to Mr. Benson from Mr. Fesser's attorney.<sup>252</sup> His testimony suggests that he was aware of the confidential and privileged nature of the communication between Mr. Fesser and his lawyer. He was specifically asked if he "maintained a copy of the letter" and he testified "I did not."<sup>253</sup> Later in his deposition, Det. Reeves was asked about "that discrimination letter" he "took from Mr. Fesser's car."<sup>254</sup> It is unclear from the transcript whether this was the letter addressed to Mr. Benson from his attorney, or a separate document. Nonetheless, it was a letter Mr. Fesser had written with the assistance of his attorney and could be considered privileged. When Det. Reeves was asked whether he "gave that letter to Mr. Benson after the arrest of Mr. Fesser," Det. Reeves testified "I

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<sup>245</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 6.

<sup>246</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 6.

<sup>247</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 6.

<sup>248</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 6.

<sup>249</sup> Transcript of Videotaped Deposition of Det. Tony Reeves, pgs. 201-202.

<sup>250</sup> Transcript of Videotaped Deposition of Det. Tony Reeves, pg. 203.

<sup>251</sup> See letter from Mr. Fesser to Mr. Benson dated 2/24/17 in appendix.

<sup>252</sup> Transcript of Videotaped Deposition of Det. Tony Reeves, pg. 192.

<sup>253</sup> Transcript of Videotaped Deposition of Det. Tony Reeves, pg. 192.

<sup>254</sup> Transcript of Videotaped Deposition of Det. Tony Reeves, pg. 249

don't remember if that happened or not.”<sup>255</sup> He was then asked “So it may have happened, but you don't recall it. Is that fair?” and the detective said “Correct, yes.”

However, Mr. Benson remembered the “discrimination” letter. During the civil litigation, Mr. Fesser's attorney asked Mr. Benson to provide documentation associated with the civil claim. Within those documents, Mr. Benson produced the letter.<sup>256</sup> When the civil lawyers asked him how he obtained a copy of it, Mr. Benson said “From Tony Poitras”.<sup>257</sup> He was asked if it was the letter seized during the search of Mr. Fesser's vehicle on February 25<sup>th</sup>. He said “I would assume” and explained that the letter was brought to him by Det. Reeves who told him “I found this in his car.”<sup>258</sup>

Despite Det. Reeves claiming he “did not remember” giving the letter to Mr. Benson, we find it hard to believe that Det. Reeves would forget such a fact given the nature of this conduct. After the letter was seized by Det. Reeves on February 25<sup>th</sup>, he immediately told Mr. Benson, who texted Chief Timeus: “Poitras found a letter already about the work place and discrimination.”<sup>259</sup> It's clear from the deposition and text message that Chief Timeus and Det. Reeves were aware of the sensitive nature of that document, but nonetheless provided it to Mr. Benson. The seizure of this letter and subsequent release to Mr. Benson was never documented in any report. The only viable reason to relay this information was to provide Mr. Benson with an advantage in the civil suit that Mr. Benson made clear he was expecting from Mr. Fesser. The conduct is obviously egregious, and insightful into the motivations and intentions behind the actions of these law enforcement representatives.

Going back to the events of February 25<sup>th</sup>, after the auction and vehicle search, Det. Reeves interviewed Mr. Fesser about the theft allegations at the Portland Police Bureau's East Precinct.<sup>260</sup> According to the police reports, Det. Reeves asked Mr. Fesser a few questions where he responded “I don't have anything to say about that,” at which point the detective ended the interview because he believed Mr. Fesser was not willing to participate.<sup>261</sup> At 11:24 pm, Mr. Fesser was released from custody.<sup>262</sup> The police did not find any evidence of theft or criminal conduct by Mr. Fesser during the February 25<sup>th</sup> auction.

In his reports, Det. Reeves talks about continuing his investigation by contacting several more witnesses.<sup>263</sup> However, the police reports only discuss one witness, a Mr. Palmer, who as previously discussed, did not cooperate.<sup>264</sup> The names and information provided by other witnesses contacted by Det. Reeves were not included in his reports. We believe one such witness was Daniel Danton, the person that Mr. Fesser was talking to during the February 25<sup>th</sup> auction. The day after the auction, February 26<sup>th</sup>, Mr. Benson sent Det. Reeves a text stating “I'm

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<sup>255</sup> Transcript of Videotaped Deposition of Det. Tony Reeves, pg. 249.

<sup>256</sup> Transcript of Videotaped Deposition of Eric Benson, pg. 234.

<sup>257</sup> Deposition of Videotaped Deposition of Eric Benson, pg. 234.

<sup>258</sup> Deposition of Videotaped Deposition of Eric Benson, pg. 234.

<sup>259</sup> Text Messages between Chief Timeus and Mr. Benson, 2/25/17, at 6:25 pm.

<sup>260</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 6.

<sup>261</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 6.

<sup>262</sup> Text Messages between Mr. Benson to Det. Reeves, 2/25/2017 at 9:20 am – 11:0 am (“FYI, he is released”).

<sup>263</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 6.

<sup>264</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 6.

interviewing Daniel at 10 in my office, maybe you should be there.”<sup>265</sup> The next day, Det. Reeves responds “Sure I’ll ask him what’s going on. See you at 10.”<sup>266</sup> The text communication continues and states that Mr. Danton did not show up for the meeting, but Det. Reeves sent a text that “3 more buyers confirming you got ripped off. NW Metals says they will be me record for vehicles purchased.”<sup>267</sup> While the police reports discuss Mr. Palmer, who worked for NW Metals, but was not cooperative according to Det. Reeves; the other two buyers referred to in this text message were never identified or mentioned in any reports.

On February 27, 2017, Mr. Benson contacted Hunter Caputo with HREssentials, his human resource contractor about firing Mr. Fesser.<sup>268</sup> Text messages indicate that Mr. Benson had been in contact with Mr. Caputo about Mr. Fesser in the days leading up to the February 25<sup>th</sup> auction.<sup>269</sup> On February 27<sup>th</sup>, Mr. Caputo sent a message to Mr. Benson stating that the termination was complete: “He’s been terminated. He was informed not to contact a and b. Let me know if he does.”<sup>270</sup> On this same date, the Multnomah County District Attorney’s Office elected to no complaint the criminal case against Mr. Fesser, meaning they were not filing charges at that time.

On February 28, 2017, Det. Reeves authored a supplemental report documenting the vehicle stop of Mr. Fesser, his arrest, the evidence seized and additional witnesses interviewed.<sup>271</sup> That same day, Mr. Fesser drove to the WLPD to retrieve his cell phone after he was summoned by WLPD detectives to retrieve his belongings. During this contact, Det. Reeves told Mr. Fesser he was fired from A&B Towing and not to return to the business.<sup>272</sup> Later that day, Mr. Benson texted Det. Reeves pictures of documents relating to a Mercedes he apparently believed may connect Mr. Fesser to additional criminal conduct.<sup>273</sup> This information was not included in Det. Reeves police reports, and it is unclear exactly what it means, or what investigative measures, if any, were taken based on the information.

The *Fesser* criminal case was dormant for a few weeks until the West Linn Police Department learned the Multnomah County District Attorney’s office did not have the police reports. Starting on March 15, 2017, there was a chain of emails from Lt. Stradley to members of the Portland Police Bureau, asking for help in trying to figure out what happened with the reports.<sup>274</sup> These conversations continued into the summer months. Lt. Stradley indicated that somebody who contacted him said, “nobody can find the case” or “the case is lost” so in the Summer of 2017, he contacted the Multnomah County District Attorney’s Office to inquire about

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<sup>265</sup> Text Messages between Mr. Benson to Det. Reeves, 2/26/2017 at 10:28 am.

<sup>266</sup> Text Messages between Mr. Benson to Det. Reeves, 2/27/2017 at 8:17 am.

<sup>267</sup> Text Messages between Mr. Benson to Det. Reeves, 2/27/2017 at 3:44 pm.

<sup>268</sup> Transcript of Videotaped Deposition of Eric Benson, pg. 220.

<sup>269</sup> Text Messages between Eric Benson and Hunter Caputo.

<sup>270</sup> Text Messages between Eric Benson and Hunter Caputo, 2/27/20 at 3:21 pm.

<sup>271</sup> West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pg. 6.

<sup>272</sup> Transcript of Videotaped Deposition of Eric Benson, pgs. 219-220 (Benson claimed that Det. Reeves fired Mr. Fesser); Transcript of Videotaped Deposition of Det. Reeves, pg. 201

<sup>273</sup> Text Messages between Mr. Benson to Det. Reeves, 2/28/2017 from 8:26 am – 9:29 am.

<sup>274</sup> Transcript of Videotaped Deposition of Lt. James Stradley, pgs. 72 – 73.

it.<sup>275</sup> The reports were eventually submitted, but the case was initially declined because the Deputy District Attorney needed additional information to further assess the case.

On May 23, 2017, Mr. Fesser filed a complaint with the Bureau of Labor and Industries (BOLI) against Mr. Benson and A&B Towing. The next day, BOLI sent Mr. Benson a letter notifying him about the complaint. Mr. Benson's attorney would later respond to the claim by stating Mr. Fesser was responsible for the theft of hundreds and thousands of dollars from the business. On May 31, 2017, Mr. Benson emailed a copy of the BOLI complaint to Chief Timeus and Det. Reeves and asked for a call.<sup>276</sup> When asked about this in his deposition, Chief Timeus claimed "he did not remember," but Det. Reeves confirmed he not only received the email and complaint, but further revealed there "may have been" multiple communications with Mr. Benson about the civil suit.<sup>277</sup> On July 3, 2017, the BOLI investigator dismissed the complaint by concluding there was insufficient evidence to substantiate the claim.

On August 1, 2017, the Multnomah County Deputy District Attorney (DDA) assigned to the Fesser case authored a Decline Memorandum after reading Det. Reeves' investigative reports. The DDA requested more information/documentation regarding the alleged thefts. On August 17, 2017, Brian Dunst, the employee with A&B Towing who played a large role in the investigation, passed away.

On September 19, 2017, Mr. Fesser filed his racial discrimination lawsuit against Mr. Benson and A&B Towing in Multnomah County Circuit Court.<sup>278</sup> On September 22, 2017, Det. Reeves emailed the Multnomah County prosecutor inquiring about the issues with the case and the reasons why it was not moving forward. The DDA responded the same day and essentially re-iterated what he put in his Decline Memorandum from August. On October 5, 2017, Det. Reeves emailed the DDA and provided additional witness contact information.

On November 9, 2017, the DDA presented the *Fesser* case to a Multnomah County Grand Jury.<sup>279</sup> The witnesses at the grand jury were Det. Reeves, Eric Benson, Nijaz Omerovic and Marcus Olmos. The alleged crimes involving Mr. Olmos were from the November 26, 2016, auction where he purchased a 2007 Toyota Yaris. As for Mr. Omerovic, the alleged crimes occurred on October 22, 2016 involving the sale of a 2004 Toyota Matrix (theft of \$1,240.00), an incident on November 26, 2016, involving the sale of a 2013 Honda Civic (theft of \$1,370), and an incident on January 28, 2017, involving the sale of a 2013 Volkswagon (theft of \$1,050).<sup>280</sup> Mr. Omerovic stated in his deposition that prior to the grand jury, Mr. Benson called him and

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<sup>275</sup> Transcript of Videotaped Deposition of Lt. James Stradley, pgs. 103-105.

<sup>276</sup> Transcript of Videotaped Deposition of Chief Terry Timeus, pgs. 143-144; Transcript of Videotaped Deposition of Det. Tony Reeves, pgs. 214-217.

<sup>277</sup> Transcript of Videotaped Deposition of Chief Terry Timeus, pg. 143-144; Transcript of Videotaped Deposition of Det. Reeves, pg. 214-217.

<sup>278</sup> See *Fesser v. Benson*, 17CV40817.

<sup>279</sup> *State v. Michael Fesser*, 17CR74881.

<sup>280</sup> *State v. Michael Fesser*, 17CR47881 (Indictment); West Linn Police Report dated 2/24/2017 by Det. Reeves, WLPD Case 2017-270, pgs. 3, 4 and 7.



asked him to show up.<sup>281</sup> Mr. Fesser was indicted on four counts of Theft in the First Degree and a warrant was issued for his arrest.<sup>282</sup>

On December 20, 2017, Mr. Benson contacted Det. Reeves and Lt. Stradley asking why Mr. Fesser had not been arrested. In response, Lt. Stradley suggested Det. Reeves make a flyer and send it out to other police agencies to notify them about the active warrant to help facilitate an arrest. Mr. Fesser was subsequently arrested on January 17, 2018 and later arraigned in Multnomah County Circuit Court.

On January 17<sup>th</sup>, 2018, Mr. Fesser's civil lawyers received the previously described text messages from Mr. Benson's phone revealing his communications with Chief Timeus and Det. Reeves during the *Fesser* investigation. On January 23, 2018, Mr. Benson was deposed by Mr. Fesser's civil attorney. During the deposition, the attorneys learned more about the relationship between Mr. Benson and representatives from the West Linn Police Department, which includes their investigation of the February 25, 2017, auction.

The text messages were subsequently provided to the Multnomah County DDA handling the *Fesser* prosecution. The DDA recognized the obvious problems created by the text messages, and on March 23, 2018, the prosecution did not oppose a civil compromise in the case, which lead to a dismissal of the charges. The civil compromise consisted of a settlement in the employment discrimination case against Mr. Benson and A&B Towing, where they agreed to pay Mr. Fesser total compensation of \$415,000, (\$172,662 was attorney fees, with the rest being paid to Mr. Fesser). For an alleged victim who repeatedly asserted that a defendant had stolen hundreds of thousands of dollars from him to agree to a civil compromise wherein the alleged victim pays the defendant hundreds and thousands of dollars, and receives nothing in return, is a highly unusual resolution in a criminal case.

Given the evidence collected during the Benson/A&B Towing litigation, Mr. Fesser filed a tort notice on June 4, 2018, stating his intent to sue the West Linn Police Department and the personnel involved in his criminal case. On July 16, 2018, the West Linn Police Department notified Det. Reeves they were doing an internal investigation and the next day he needed to appear for a disciplinary interview relating to his conduct during the *Fesser* investigation.

On July 17, 2018, Lt. Odis Rollins with the West Linn Police Department conducted an interview with Det. Reeves pursuant to the internal investigation. The interview was recorded and lasted a total of fifteen minutes. During the interview, Det. Reeves was asked direct and leading questions. These inquires included the following:

- Lt. Rollins: "During this investigation did you send any text messages to Benson that were explicitly racist in nature of content?"
- Det. Reeves: "No." (1:40).
- Lt. Rollins: "Did you send any text messages that were explicitly homophobic in nature or content?"

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<sup>281</sup> Transcript of Videotaped Deposition of Nijaz Omerovic, pgs. 95 – 96.

<sup>282</sup> *State v. Michael Fesser*, 17CR74881.

- Det. Reeves: “No, not that I know it, no I don’t think so.” (1:51).
- Lt. Rollins: “Did you send any text messages that were explicit in nature or content?” (2:00)
- Det. Reeves: Stated that during the (2/25) auction, he called Det. Timeus because they (he and Mr. Benson) are good friends and the chief told him (Mr. Benson) “not to be a pussy.” The detective admitted that he was definitely not professional in some of the text messages and admitted to engaging in “that sort of banter” but claimed it was not homophobic/sexual nature.

During the initial portion of the interview, Det. Reeves denied having any face-to-face communication or telephonic conversations with Mr. Benson that were racist, homophobic or sexual in nature. He also talked about seizing Mr. Fesser’s cell phone on February 25, 2017, to write a search warrant. Det. Reeves said he secured the cell phone in his office, but eventually decided not to write the warrant, and ultimately returned the phone and other items to Mr. Fesser.

The interview then stopped after about eleven minutes into the conversation with Det. Reeves, along with the recording. After an unknown period of time, the recording is turned back on, Det. Reeves re-engages with Lt. Rollins and said that he remembered Mr. Benson sending a text about “Nigger-knocking on the door” and that was it. Det. Reeves also said he did not acknowledge this text in any way.

The internal investigation into Det. Reeves’ conduct in the *Fesser* case included this interview, an interview with Det. Michael Boyd, who assisted with the case, and a review of the text messages between Det. Reeves and Mr. Benson, the alleged victim. On July 24, 2018, Capt. Hennelly issued a written reprimand as the discipline for Det. Reeves in this matter. However, he did not sustain findings of a policy violation related to the West Linn Police Department’s “Discrimination, Oppression or Favoritism” policy. He did, however, sustain a violation of the “Use of obscene, indecent, profane, or derogatory language while on duty, or in uniform” policy. Lt. Rollins specifically found that “in text messaging with Mr. Benson, your use of the term “PUSSY” and the expression “TEA BAGGING” both are inappropriate. You were speaking to a crime victim during the course of your official duties as a West Linn Police Officer.”

On August 17, 2018, the civil lawsuit against the West Linn Police Department and its personnel were removed to federal court. During the course of the next year, the parties filed numerous interrogatories and held depositions of witnesses to include Michael Fesser, Eric Benson, Det. Reeves, Chief Timeus, Lt. Stradley, Det. Boyd, Capt. Neil Hennelly, Mr. Marlow and Mr. Omerovic.

## **V. Analysis**

The following section outlines the analysis by the CCDA regarding the conduct by the officers involved in the West Linn Police Department’s investigation into Michael Fesser. The analysis identifies misconduct and inappropriate behavior that supports the conclusion that this investigation lacked transparency, honesty and any sense of fair play. The CCDA documents its specific conclusions about *Brady* violations in both the summary and conclusion sections of this report.

***A. Why was the WLPD Handling this Investigation?***

It is highly unusual for a law enforcement agency to undertake a criminal investigation outside of its jurisdiction without either being invited by another agency, starting an investigation in its own jurisdiction that ultimately leads to another county, or being part of a multi-jurisdictional task force. It is not inherently inappropriate for a police department to perform a service and investigate a case for a resident who could not get the police agency in the appropriate jurisdiction to evaluate an allegation of theft of hundreds of thousands of dollars. However, in the rare instance where this might occur, one would expect the investigative reports to reflect why an agency was investigating allegations of criminal activity that is not even prosecutable in that agency's home county. The impropriety is compounded when that resident/alleged victim is the Police Chief's friend, yet there is no mention of this personal relationship in the police reports. It then becomes even more concerning when the investigation is almost complete before the option of referring the case to a more appropriate agency—like one without such a conflict—had been fully vetted. It also bears mentioning that during the civil litigation, the WLPD could not identify a single case where it investigated a case of employee theft outside of its jurisdiction.<sup>283</sup>

The statements by Chief Timeus and Det. Reeves characterizing the WLPD's handling of the *Fesser* investigation as standard investigative practice—when it had absolutely no ties to the City of West Linn other than Mr. Benson's friendship with Chief Timeus—ring hollow. Our collective experience in reviewing thousands of criminal cases demonstrates that the reasons for such an unusual investigation should be documented in investigative reports.

It appears the WLPD's involvement in this investigation was driven by Chief Timeus' personal friendship with Mr. Benson. Chief Timeus personally assigned this investigation to Det. Reeves shortly after he was contacted by Mr. Benson, and Det. Reeves almost immediately began engaging in unprofessional and questionable interactions with Mr. Benson.

***B. Omissions in the Investigation and Report Writing***

Law enforcement officers must be detailed in their investigations and report writing. Deficiencies in report writing, investigations or evidence collection is rarely a basis to initiate a *Brady* review. However, the information omitted from the reports in the *Fesser* investigation is stark and concerning. The failure to include much of this information was not borne of negligence or inexperience. It appears to have been done in bad faith.

As mentioned above, there is no indication whatsoever in the reports as to why the WLPD was involved in this investigation to begin with. This information could be used to impeach the motives of the WLPD for being involved in the first place. Someone reading the

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<sup>283</sup> Defendant West Linn Police Department Response to Plaintiff's Third Set of Interrogatories, *Michael Fesser v. The City of West Linn, Terry Timeus, Tony Reeves, Mike Boyd and Mike Stradley*, Civil No. 3:18-cv-01516-SB, Interrogatory No. 15.

investigative reports would believe that WLPD handling this investigation was just in the normal course of business.

Mr. Benson is on record asserting that Mr. Fesser was responsible for well over \$100,000 in losses. He even requested over \$100,000 in restitution in the course of the criminal prosecution. Financial records were collected from auctions preceding the dates of the thefts that formed the basis for the indictment, yet the WLPD made no effort to do a rudimentary analysis of thefts that were alleged to have occurred prior to November of 2016. Thus, the theme of the whole investigation was that Mr. Fesser was responsible for stealing hundreds and thousands of dollars, but there was no evidence to support that conclusion. Det. Reeves also did not consider the fact that Mr. Benson had no consistent manner in which to track auction sales, as customers were not required to sign documentation reflecting the price paid for a vehicle in these all cash transactions.

It is still unclear how or why Mr. Benson initially suspected Mr. Fesser was responsible for any alleged theft. In the investigative reports, Mr. Benson states he noticed he was not making as much money from the auctions as he felt he should have in the Summer of 2016 and he called other similar businesses to compare what was happening in their auctions. In the civil depositions, Mr. Benson denied calling other businesses. In the rush to complete the investigation and make an arrest, Det. Reeves accepted Mr. Benson's statements at face value and without question. Quite simply, the WLPD decided to initiate a criminal investigation when there was no actual evidence that a crime was taking place, and the WLPD acknowledged as much during the civil litigation.<sup>284</sup>

Det. Reeves' initial report states his first contact with Mr. Benson occurred on February 6, 2017. This is a claim he repeated in his written discovery responses during the civil litigation and in his deposition. However, it is clear there were substantive contacts between Mr. Benson and Det. Reeves in January of 2017. Mr. Benson had already offered to front cash as part of the ill-conceived "sting" operation no later than February 1, 2017, as evidenced by the email from Det. Reeves to PPB Det. Becker. Therefore, it is obvious there were more substantive contacts and interviews of Mr. Benson taking place that were not included in the investigative reports.

The investigative reports state that Mr. Omerovic contacted Mr. Benson about Mr. Fesser and had information supporting the theft allegation. Det. Reeves subsequently interviewed Mr. Omerovic, who allegedly told Det. Reeves that Mr. Fesser had been stealing from the auction for years. According to the report, Omerovic further stated he had seen Mr. Fesser with two auction sheets, one recording the real sales price and the other recording a fraudulent sales price. Mr. Omerovic also stated that he had known this for several years, but didn't report it because he was fearful of Mr. Fesser. There is no detail in the report regarding why Mr. Omerovic was contacting Mr. Benson in the first place, how he actually came to know Mr. Fesser had two

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<sup>284</sup> Transcript of Videotapes Deposition of Det. Tony Reeves, pgs. 81-82 (Det. Reeves testified that Mr. Benson's initial suspicions were not evidence), and 172-173 (the detective admitted that he simply accepted Mr. Benson's assertions without question); *also see* Defendant West Linn Police Department's Response to Plaintiff's First Request for Admission, *Michael Fesser v. West Linn Police Department; Terry Timeus; Tony Reeves; and Mike Boyd*, Civil No. 3:18-cv-1516-BR, Response #2, pg. 2.

auction sheets, or what Mr. Fesser was writing on these documents about the prices paid for the cars at the auctions.

In his civil deposition, Mr. Omerovic told a much different story. He said Mr. Benson initiated contact with him to discuss Mr. Fesser. Mr. Omerovic further testified he had no pre-existing knowledge that Mr. Fesser was allegedly stealing from the auctions prior to Mr. Benson contacting him. Mr. Omerovic said the first he heard of it was at this meeting with Mr. Benson and he never stated he saw Mr. Fesser with two separate auction sheets. He later contradicted himself during questioning from WLPD's counsel by saying he did provide some of this information during the meeting with WLPD detectives, and then offered additional contradictions when pressed on the issue about what he actually told detectives. Accordingly, there are vast discrepancies between Mr. Omerovic's statements in the investigative reports and his civil deposition.

Furthermore, it was revealed in the deposition that Mr. Benson asked Mr. Omerovic to attend the 2/25 auction as part of this undercover operation. It was clear Det. Reeves had pre-existing knowledge of this fact from his text messages with Mr. Benson on 2/25. Det. Reeves did not include any information in the investigative report concerning the role Mr. Omerovic was supposed to play in the 2/25 auction.

By all accounts, Brian Dunst was an important witness in this investigation. It was clear he and Mr. Benson were working together to collect and develop much of the evidence. By 2/11/17, Det. Reeves' report states that Mr. Dunst had a "friend" attend an auction and allowed Mr. Dunst to listen in by using his phone and recording the auction process. Based on the information collected by Mr. Dunst, Det. Reeves concluded Mr. Fesser was responsible for approximately \$1000 in thefts on that date alone. Det. Reeves accepted and adopted these conclusions without question, yet did not conduct follow up investigation, or include information in his report that would be necessary in assessing the provability of the allegation.

The reports do not identify the "friend" who was actually at the auction, and there was no attempt to interview this individual. At this point, Det. Reeves had been involved in this investigation for several weeks and had already discussed a tentative plan with Mr. Benson where he would front investigators cash to purchase automobiles at auctions. It is hard to believe Det. Reeves had no prior knowledge that Mr. Dunst would be taking on the independent "sting" operation on 2/11. A failure to include even a basic explanation as to how the 2/11 auction plan came to fruition leaves more concerning questions than answers.

The investigative reports also fail to mention Angela Palmer. They state Mr. Benson reported an "employee" said that her boyfriend, Marcos Olmos, bought cars at auction for a particular price, leading Mr. Benson to cross-check the auction sheets and discover discrepancies. During the investigation, Det. Reeves never interviewed Ms. Palmer, nor did he determine why she approached Mr. Benson with this information in the first place.

The investigative reports state that Det. Reeves "contacted several more witnesses" after the arrest of Mr. Fesser. One such witness was Robin Palmer, an employee of NW Metals, which is a business that purchases cars at auction from A&B Towing. Det. Reeves approached Mr.

Palmer about getting records to investigate additional thefts. Due to a statement made by Mr. Fesser after his arrest, however, the detective automatically concluded that Mr. Palmer would not cooperate. He also made no effort to engage in additional fact gathering or obtain records from NW Metals. Of more concern is a text to Mr. Benson on 2/27/17, where Det. Reeves says he found three more witnesses that would confirm that Mr. Fesser was stealing. The investigative reports fail to identify any of these witnesses and the information they could provide.

Det. Reeves met with Mr. Fesser at the WLPD to return Mr. Fessers' phone and cash seized on 2/25. The investigative reports do not document these items as being seized or checked into the property room. During this contact, Det. Reeves essentially placed himself in the position of being the Human Resources Manager of A&B Towing by firing Mr. Fesser from his job. None of this was documented in his report. As a matter of fact, not a single interview of any witness, including Mr. Fesser, was audio recorded.

Furthermore, there were lengthy, substantial, and offensive texts between Det. Reeves and Mr. Benson while Det. Reeves surveilled the 2/25 auction. These texts contained substantial evidence of improper bias on the part of Mr. Benson. Had the Multnomah County DDA been aware of these texts when analyzing the criminal case, it likely would not have been presented to a grand jury.

Detective Reeves also failed to document in his reports anything that happened at the 2/25 auction, including the fact that he was party to a surreptitious recording of Mr. Fesser. The failure to include any such information denigrates any sense of fair play that one would expect to be present in a criminal investigation.

### *C. The Text Messages*

The totality of the text messages between Det. Reeves and Mr. Benson eradicate any idea this was a fair, unbiased search for the truth, supported by competent investigative decision-making. Det. Reeves' unprofessional and far too familiar banter with Mr. Benson demonstrates an investigative bias and lack of critical analysis that existed from day one in this investigation. The following portions of the conversation were most striking.

In the midst of Mr. Benson's racist remarks, Det. Reeves attempts to assure Mr. Benson by telling him an arrest will help defeat a racial discrimination lawsuit. Det. Reeves would later state in his civil deposition that he believed he had probable cause to arrest Mr. Fesser prior to this text exchange. However, this is immaterial. At this point, the detective was unaware of Mr. Fesser's experiences at A&B Towing, yet he chose to express that an arrest could help defeat any legitimate claim Mr. Fesser may have in this regard.

When Mr. Benson expresses second thoughts about following through with the arrest, Det. Reeves contacted Chief Timeus, who then told him to tell Mr. Benson he was a "pussy," and Det. Reeves eagerly complied. Det. Reeves also told Mr. Benson that his insurance would cover any lawsuit Mr. Fesser might bring. This type of communication in the midst of a serious criminal investigation gives us zero confidence it was a search for the truth. In our collective

experience evaluating criminal cases, having an alleged victim play such an active role in the investigation is unusual and happened because of Mr. Benson's friendship with Chief Timeus.

On the heels of Mr. Benson expressing his misgivings about the arrest, Det. Reeves again tries to assure him by stating he has six witnesses. Mr. Benson responds, "they are dirty." During the civil depositions, everyone claimed a lack of understanding of the meaning behind this statement. The context of the statement indicates that Mr. Benson did not have trust in the witnesses he provided to Det. Reeves. Since Mr. Benson was the contact point for these individuals, it begs the question why Det. Reeves did not follow up with Mr. Benson about why he believed they were "dirty."

Finally, Det. Reeves intentionally erased these text messages. He testified he did it because he thought the investigation was complete. He erased the messages, however, before the grand jury convened. This was highly relevant and exculpatory evidence that should have been preserved and provided to the prosecution.

#### ***D. Providing Documents Seized in the Search of Mr. Fesser's Car to Mr. Benson***

Det. Reeves seized legal paperwork from Mr. Fesser and provided it directly to Mr. Benson in an effort to give him further insight about the civil lawsuit Mr. Benson feared he was planning. Of course, this was one of many things not documented in the police reports; which was not an accident. Chief Timeus was aware this took place and did nothing to correct conduct that was highly inappropriate. This is intolerable.

### **VI. Findings and Conclusions**

Each of the issues discussed in this report cannot be considered in isolation, but must be viewed with consideration toward their cumulative effect. The conclusions in this report are not intended to signal that failing to include certain information in investigative reports or retain certain evidence will always lead to a finding of misconduct. However, the totality of the circumstances in this particular case indicate a troubling pattern of deceit by omission. Det. Reeves and Chief Timeus failed to adhere to their *Brady* obligations in this case. Their conduct was not merely negligent, inadvertent or the result of a momentary lapse of judgment. It continued throughout the course of the investigation. It reflects negatively on their honesty, judgment and sense of fair play that every suspect and victim deserves.

Concerning Det. Reeves, the CCDA specifically finds that his conduct was of such a nature and degree that our office will not call him as a witness in any criminal case. We find that he committed the following misconduct:

- Failure to Preserve Exculpatory Evidence: Det. Reeves intentionally deleted exculpatory and impeachment evidence in the form of text message conversations between Eric Benson and himself that include, but are not limited to, racial epithets/slurs, a motivation to fabricate the theft allegations, and an appearance of improper collusion between the parties to defeat Michael Fesser's civil claims.

- Unlawful Recording: Det. Reeves was complicit in recording statements from Mr. Fesser and other individuals during a February 25, 2017, auction without the parties' consent.
- Improper Seizure and Disclosure of Confidential Attorney-Client Information: Det. Reeves seized legal paperwork from Mr. Fesser documenting and discussing his legal intentions and information about the filing of a racial discrimination lawsuit against the alleged victim, Mr. Benson. Det. Reeves then provided Mr. Benson with some of this paperwork. His actions were inappropriate and a violation of Mr. Fesser's attorney-client privilege as this was a document Mr. Fesser was preparing with help from his attorney. Even if the document was in some way not considered to be privileged, it doesn't change the fact that Det. Reeves seized this letter, didn't document it in his report and immediately provided it to Mr. Benson. His actions in this regard give us significant doubt about his motivations and integrity.
- Failure to Disclose Exculpatory/Impeachment Evidence: In addition to the text messages, the detective failed to disclose or document additional relevant exculpatory/impeachment evidence that includes, but is not limited to:
  - Bias/impeachment evidence about Mr. Benson's fear that Mr. Fesser was going to file a racial discrimination lawsuit.
  - Mr. Benson's use of racial slurs and epithets.
  - Failure to include information about surveillance of the February 25, 2017 auction, during which Mr. Fesser did not commit any criminal act, and destruction of notes relating to that auction.
  - Failure to include information about Chief Timeus' relationship with Eric Benson in investigative reports.

The weight of the evidence is that these omissions were not merely negligent, inadvertent or due to a lack of experience. The effect was to mislead, as a reasonable investigator would be aware that this information is relevant and material in a criminal investigation.

The Clackamas County District Attorney's Office also find that Chief Timeus engaged in the following misconduct:

- Disclosure of Confidential Attorney-Client Information: Chief Timeus was aware of and therefore complicit in the disclosure of legal paperwork seized from Mr. Fesser and provided to Mr. Benson. Chief Timeus and Det.



Reeves' actions were inappropriate and a violation of Mr. Fesser's attorney-client privilege. Even if the document was in some way not considered to be privileged, it doesn't change the fact that Chief Timeus was aware Det. Reeves seized this letter and immediately provided it to Mr. Benson. His actions in this regard give us significant doubt about his motivations and integrity as he should have immediately recognized this conduct was improper. In addition, the act of delivering such a letter is further evidence of the collusion that existed throughout this investigation between the chief, the detective and the alleged victim Mr. Benson.

Chief Timeus was responsible for initiating a criminal investigation outside the City of West Linn based on a personal relationship, which is highly improper. This investigation was initiated despite the absence of evidence that Mr. Fesser was engaging in criminal conduct, and the WLPD acknowledged as much during the civil litigation. Chief Timeus' failure of leadership created a culture that allowed this to happen.

The analysis in this case also included a review of former West Linn Police Lt. Mike Stradley's conduct in addition to Detective Mike Boyd. There is currently an investigation by the City of Portland's Independent Police Review oversight agency that is examining the interaction between PPB and WLPD. We will reserve our final assessment regarding Lt. Stradley until that investigation is complete. We also do not find substantial evidence that Det. Boyd committed *Brady* misconduct. The District Attorney's Office will nonetheless provide all of the information in this investigation to the defense in any case where he is a witness.

The Clackamas County District Attorney's Office is reviewing 40 active criminal cases where Det. Reeves played a role in the investigation. Any case that cannot be proven without his testimony will be dismissed. Information about these cases will be released after proper notification has been made to defense counsel and any victim that may be impacted. The District Attorney's Office will also conduct a review of approximately 500 closed cases where Det. Reeves is mentioned or played a role in the investigation. Dismissal of criminal cases is never a desired outcome, and guilty individuals will be the beneficiary of this decision, but the integrity of the criminal justice system is paramount.

We are referring this matter to the Department of Public Safety Standards and Training (DPSST) with the recommendation that Det. Reeves' and Chief Timeus' police certifications be revoked.

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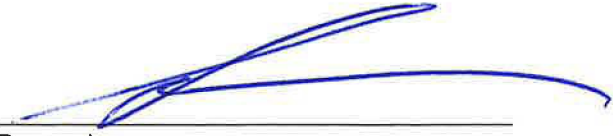
Clackamas County District Attorney's Office

Pursuant to the policy of the CCDA, Det. Reeves and Chief Timeus may seek reconsideration through an appeal to the District Attorney and submit any new or additional information they believe is relevant.



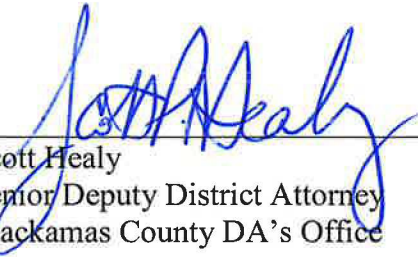
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